



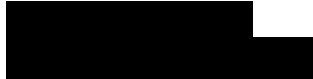
CeCe Heil
Senior Counsel

Admitted in CA, TN, VA & MO

October 13, 2014

VIA FEDERAL EXPRESS OVERNIGHT

Michael Czarcinski
General Manager
The Westin Bonaventure Hotel & Suites



Dear Mr. Czarcinski:

The American Center for Law & Justice (“ACLJ”) is aware that Today’s IV, Inc., d/b/a/ The Westin Bonaventure Hotel & Suites (the “Westin Bonaventure”), through its agent, Interstate Hotels, LLC (“Interstate Hotels”) has contracted with the American Studies Association (“ASA”) to host the ASA’s 2014 Annual Meeting on November 4 – 9, 2014 (Annual Meeting).

The ACLJ is deeply concerned that unlawful discriminatory exclusionary policies will be implemented by the ASA as to who is permitted to attend the Annual Meeting at the Westin Bonaventure.

As set forth below, in connection with ASA’s Academic Boycott of Israel (“Boycott”), all Israeli academic institutions and academics acting in a representative capacity will be barred from participation in the ASA’s Annual Meeting. No other national origin group is subjected to this exclusionary policy and litmus test as to representative capacity. Moreover, since the overwhelming majority of Israelis targeted by the boycott are Jewish, the exclusionary policy is likely to have a disparate impact on Jewish Israelis—thereby discriminating on the bases of race and religion.

The purpose of this letter is to put the Westin Bonaventure and Interstate Hotels, their owners, administrators, and employees on notice of the nature of the Boycott and, more importantly, the liability under California’s Unruh Civil Rights Act for aiding the ASA in enforcement of this unlawful discriminatory policy at the Annual Meeting on the premises of the Westin Bonaventure.



By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion.¹ As a part of the organization's commitment to the freedom of speech, ACLJ attorneys regularly handle cases specifically involving the protection of academic freedom.²

The Boycott

On December 4, 2013, the National Council of the ASA passed the Council Resolution on Boycott of Israeli Academic Institutions which, in part, resolved "that the [ASA] endorses and will honor the call of Palestinian civil society for a boycott of Israeli academic institutions."³ That resolution then was ratified by a majority of ASA members voting on the resolution (although a small minority of the total ASA membership due to low voting participation).

According to the ASA, the Boycott constitutes "a refusal on the part of the Association in its official capacities to enter into formal collaborations with Israeli academic institutions, or with scholars who are expressly serving as representatives or ambassadors of those institutions, or on behalf of the Israeli government, until Israel ceases to violate human rights and international law."⁴ In the context of its Annual Meeting, the ASA has clarified its intention to deny participation to Israeli "institutions and their representatives," which include all individual Israeli academics "serving as representatives or ambassadors of those institutions (such as deans, rectors, presidents, etc.), or of the Israeli government."⁵

Despite condemnation of the Boycott by over 250 universities and colleges, including at least eight that have terminated their membership with the ASA as a result of the Boycott,⁶ and a strongly worded statement by the Association of American Universities urging "scholars around the world who believe in academic freedom to oppose [the Boycott],"⁷ the ASA has not rescinded the Boycott or its exclusionary participation policy for the upcoming Annual Meeting.

¹ See, e.g., *Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport's ban on First Amendment activities).

² E.g., *Adams v. Trustees of the Univ. of North Carolina-Wilmington, et al.*, No. 7:07-cv-00064-H (E.D.N.C. Apr. 10, 2007); *Enstrom v. Rice, et al.*, No. 2:12-cv-5168-JGB-SSx (C.D. Cal. June 13, 2012); *Jenkins v. Kurtinitis, et al.*, No. 1:14-cv-1346-ELH (D. Md. Apr. 21, 2014); *Buxton v. Kurtinitis, et al.*, No. 1:14-cv-2836-ELH (D. Md. Sep. 8, 2014).

³ *Council Resolution on Boycott of Israeli Academic Institutions*, AMERICAN STUDIES ASSOCIATION (Dec. 4, 2013), http://www.theasa.net/american_studies_association_resolution_on_academic_boycott_of_israel.

⁴ *Council Statement on the Boycott of Israeli Academic Institutions*, AMERICAN STUDIES ASSOCIATION (Dec. 4, 2013), http://www.theasa.net/from_the_editors/item/council_statement_on_the_academic_boycott_of_israel_resolution/.

⁵ *ASA Academic Boycott Resolution Frequently Asked Questions*, AMERICAN STUDIES ASSOCIATION, http://www.theasa.net/images/uploads/ASA_Boycott_FAQs.pdf (last accessed Oct. 13, 2014).

⁶ See, *List of Universities rejecting academic boycott of Israel*, LEGAL INSURRECTION (Dec. 22, 2013), <http://legalinsurrection.com/2013/12/list-of-universities-rejecting-academic-boycott-of-israel/>.

⁷ *AAU Statement on Boycott of Israeli Academic Institutions*, ASSOCIATION OF AMERICAN UNIVERSITIES (Dec. 20, 2013), available at <http://www.aau.edu/WorkArea/DownloadAsset.aspx?id=14859>.

California's Unruh Civil Rights Act

California's Unruh Civil Rights Act (the "Act") Section 51 states, in relevant part:

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, **religion**, ancestry, **national origin**, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(e)(6) "Sex, race, color, **religion**, ancestry, **national origin**, disability, medical condition, genetic information, marital status, or sexual orientation" **includes a perception** that the person has any particular characteristic or characteristics within the listed categories or **that the person is associated with a person who has, or is perceived to have, any particular characteristic** or characteristics **within the listed categories**.⁸

Section 51.5 of the Act further provides that:

(a) No business establishment of any kind whatsoever shall **discriminate against, boycott** or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.⁹

The Act creates a legal cause of action for damages for violations of both Sections 51 and 51.5, stating: "**Whoever** denies, **aids** or incites **a denial**, or makes any discrimination or distinction contrary to Section 51 . . . **is liable for each and every offense for the actual damages** . . . suffered by any person denied the rights provided in Section 51, 51.5, or 51.6."¹⁰ A defendant sued under the Act may be held liable for "up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000)."¹¹

A plaintiff suing under the Act may also recover attorney's fees and obtain injunctive relief and may bring suit against any *individuals* who aid in discriminatory actions, as "[c]ourts within the Ninth Circuit have routinely interpreted the Unruh Act to provide plaintiffs with recourse against individual defendants."¹²

⁸ CAL. CIV. CODE § 51(b), (e)(6) (2014) (emphases added).

⁹ CAL. CIV. CODE § 51.5(a) (emphases added).

¹⁰ CAL. CIV. CODE § 52(a) (2014) (emphases added).

¹¹ *Stevens v. Optimum Health Inst.*, 810 F. Supp. 2d 1074, 1085 (S.D. Cal. 2011) (citations omitted).

¹² *J.F. v. New Haven Unified Sch. Dist.*, 2014 U.S. Dist. LEXIS 55964, *15 (N.D. Cal. 2014) (citing *Nicole M. ex rel. Jacqueline M. v. Martinez Unified Sch. Dist.*, 964 F. Supp. 1369, 1388 (N.D. Cal. 1997); *Aikins v. St. Helena Hosp.*, 843 F. Supp. 1329, 1339 (N.D. Cal. 1994)).

Because the Unruh Act is broadly construed,¹³ it applies to “all business establishments of every kind whatsoever which provide services, goods, or accommodations to the public . . . includ[ing] . . . bars and restaurants . . . [and] hotels and motels.”¹⁴ The term “person” in Section 51(b) is also widely inclusive and protects from discrimination “any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.”¹⁵ Hence, not only individual Israelis, but also Israeli academic institutions, are protected by the Unruh Act with regard to conduct taking place in California.

The Westin’s Contract to Host the Annual Meeting

As a hotel, the Westin is clearly a business establishment as defined by the Unruh Act, and the Westin Bonaventure and its managing agent, Interstate Hotels, as well as their administrators and employees, are therefore subject to the anti-discrimination laws found therein.¹⁶

We are aware that the Westin Bonaventure’s standard form of contract for events such as the ASA meeting contains a provision that “**Each party will comply with all applicable federal, state and local laws . . .**” In addition to fulfilling their legal obligations under the Unruh Act, the Westin Bonaventure and Interstate Hotels appear to have a contractual ability to prevent unlawful discriminatory exclusionary policies being implemented at the Annual Meeting.

Of paramount importance to the present situation is the fact that in passing the Unruh Act, the California Legislature was specifically motivated by a prior boycott of Israel and a concern that certain businesses in California would deny products and services to Jews.”¹⁷

Like the boycott of Israel that served as a direct impetus for passage of the Unruh Act, the Boycott targets specific organizations for disparate and discriminatory treatment solely on the basis of their national origin, as well as specific individuals who are associated with those organizations in a representative capacity. Because the distinction between those with whom the ASA will and will not enter into formal collaboration is based solely upon association with the State of Israel, any person (*i.e.*, academic institution or individual representative thereof) who is prohibited from participating in the Annual Meeting at the Westin Bonaventure due to the Boycott will indeed have a cause of action under the Unruh Act.

¹³ See *Burks v. Poppy Construction Co.*, 57 Cal. 2d 463, 468 (Sup. Ct. Cal. 1962) (“The Legislature used the words “all” and “of every kind whatsoever” in referring to business establishments covered by the Unruh Act, and the inclusion of these words, without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term ‘business establishments’ was used in the broadest sense reasonably possible.”).

¹⁴ State of California, Department of Justice, Office of the Attorney General, Chapter 4 – Public Accommodations, Businesses, and Services, <http://oag.ca.gov/publications/CRhandbook/ch4> (last visited July 14, 2014).

¹⁵ CAL. CIV. CODE § 51.5(b) (2014).

¹⁶ See generally, *Stevens v. Optimum Health Inst.*, 2010 U.S. Dist. LEXIS 44250 (S.D. Cal. 2010) (citing *Marina Pt., Ltd. v. Wolfson*, 30 Cal. 3d 721, 731 (1982) (classifying a hotel as a business establishment and stating that “The Unruh Act expanded the reach of such statutes from common carriers and places of public accommodation and recreation, *e.g.*, railroads, hotels, restaurants, theaters and the like, to include ‘all business establishments of every kind whatsoever.’”)

¹⁷ *Semler v. General Electric Capital Corp.*, 196 Cal. App. 4th 1380, 1404 (Cal. Ct. App. 2011).

We hope that the situation will not culminate in litigation, and the Westin Bonaventure and Interstate Hotels will do the right thing and fulfill their legal obligations to prevent unlawful discrimination before it happens at the Westin Bonaventure.

In light of the serious legal implications discussed herein, and so that we may consider the next legal steps, the ACLJ requests that within 5 days of this letter, the Westin Bonaventure and Interstate Hotels inform us of their position on whether they will allow the discriminatory and unlawful Boycott rules to be applied at the Annual Meeting on the Westin Bonaventure's premises.

Respectfully,



CeCe Heil
Senior Counsel

David French
Senior Counsel
AMERICAN CENTER FOR LAW & JUSTICE

cc: Fong Zen Tee, President, Today's IV
Louis N. Haas, Registered Agent, Today's IV
Jim Abrahamson, CEO, Interstate Hotels, LLC
John F. Stephens, Executive Director, American Studies Association