

FOR IMMEDIATE RELEASE

December 18, 2015

Brandeis Center Warns Tower Foundation Against Divestment

WASHINGTON, D.C. – The Brandeis Center applauds San Jose State University’s (SJSU) Tower Foundation for voting not to divest from companies that do business with Israel but regrets that it permitted a discriminatory anti-Israel boycott to be brought forward for a vote. LDB had warned the Tower Foundation that the proposed divestment motion was unlawful and could subject Tower director’s to personal liability.

“We applaud the Tower Foundation’s decision to reject this discriminatory boycott,” LDB President Kenneth L. Marcus commented. “But the issue should never have gotten this far in the first place. We had warned the Foundation that this anti-Israel divestment motion, beyond just being discriminatory and bigoted, would have been an unlawful ultra vires action outside of the lawful authority of the Tower Foundation’s officers and board.” The Tower Foundation is responsible for growing SJSU’s endowment, and its Board of Directors is composed of SJSU alumni and top university officials. Under California law, a corporation may recover damages when a director engages in ultra vires activities.

Marcus added, “Needless to say, it would have alienated Jewish and Israeli students on campus, and would have sent a very damaging message to the campus community. But it would also have been illegal and would have created liability for the directors.”

The Tower Foundation’s decision followed a series of correspondence from Brandeis Center attorneys, advocacy from Hillel director Sarita Bronstein and other organizations. Ms. Bronstein organized meetings with the Tower Foundation CEO, SJSU Interim President Sue Martin, the finance committee, and others to educate the Tower Foundation’s board on the importance of rejecting this boycott, and supporting SJSU students. Marcus commented, “We are grateful for Sarita Bronstein’s leadership.”

The vote arose in response to an SJSU Associated Student Government resolution, calling upon the Tower Foundation’s Board of Directors to commence a discriminatory and unlawful boycott of certain companies that do business with Israel. The resolution passed in the Student Government by a vote of 10-5. Despite the discriminatory nature of this vote, Interim SJSU President Sue Martin issued a statement to the University community, saying she was told that “. . . the debate was vigorous and civil . . .” and that she respects the “Associated Students leaders for embracing this challenge, and thank[s] all who invested time in expressing their views on such a complex and contentious subject.” The Brandeis Center admonished President Martin that her statement “could likely be construed as praise for this discriminatory boycott, which could in turn worsen campus climate for Jewish and Israeli students.”

In addition to the letter to President Martin, the Brandeis Center wrote to Tower Foundation CEO Paul Lanning, urging him to firmly reject the divestment resolution, as not only would it worsen the campus

climate for Jewish and Israeli students, but also because the proposed boycott was outside the lawful authority provided by the Tower Foundation's Articles of Incorporation, and as such, against California law. The Articles state that the Corporation is organized "exclusively for educational purposes" and that "the corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that do not further the purposes of this corporation. . . ." Such a boycott would in no way further these purposes.

"We are pleased with the outcome," LDB President Marcus added, "However, where divestment votes are passed by undergraduate student governments, we often see an increase in anti-Semitic, and anti-Semitic-disguised-as-anti-Israel, incidents on campus. Brandeis Center attorneys will continue to closely monitor this campus for anti-Semitic civil rights violations against Jewish students."

The Brandeis Center's letter to the Tower Foundation may be found below:

December 15, 2015

Paul Lanning

Chief Executive Officer

The Tower Foundation

San Jose State University

One Washington Square,

San Jose, CA 95192

VIA E-MAIL (paul.lanning@sjsu.edu)

Dear Mr. Lanning:

We write on behalf of the Louis D. Brandeis Center for Human Rights Under Law (LDB), a public interest advocacy organization that combats anti-Semitism in higher education. We urge you today to reject the Associated Student Government of San Jose State University's resolution urging the Tower Foundation to commence a discriminatory and unlawful boycott of certain companies that do business with Israel.

The proposed boycott is outside the lawful authority provided by the Tower Foundation's Articles of Incorporation, which states that, "This Corporation is organized exclusively for educational purposes within the meaning of Internal Revenue Code §501(c)(3) or the corresponding provision of any future United States internal revenue law" (emphasis added). Indeed, the Tower Articles specify, quite

explicitly, that “the corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that do not further the purposes of this corporation. . . .”

A California corporation cannot take ultra vires actions. The term “ultra vires” refers to an act beyond the powers conferred upon a corporation by its charter or by the laws of the state of incorporation (see *Marsili v. Pacific Gas & Elec. Co.*, 51 Cal.App.3d 313, 322 (1975)). Under California law, directors of a corporation that violate this rule may be held legally liable. A corporation may recover damages when a director engages in ultra vires activities, and the director may not defend such action by alleging ratification (see Cal.Corp.Code § 208(a); *Sammis v. Stafford*, 48 Cal. App. 4th 1935, 1942 (1996)).

Aside from alienating Jewish and Israel students at SJSU, an anti-Israel boycott would be unlawful as an ultra vires action beyond the lawful authority of the Foundation’s officers and board on your campus, and send a very damaging message to the campus community. We urge you to firmly reject the discriminatory resolution, and firmly restate your university’s commitment to diversity and inclusion, for Jewish students and all students

Sincerely,