



US Campaign for Palestinian Rights



Oppose the Israel Anti-Boycott Act

We are a diverse group of civil and human rights organizations writing to express our **strong opposition to the Israel Anti-Boycott Act (S. 720 and H.R. 1697)** (Act). We call on you to publicly oppose this unconstitutional, draconian bill and to affirm the First Amendment right of all people in the United States to support political boycotts as a means to achieve justice and equality for Palestinians.

The Act amends anti-boycott provisions of the federal Export Administration Act (EAA), enacted in 1979.¹ Those provisions prohibit specific actions taken to comply with or support a boycott of Israel “fostered or imposed” by a foreign country. The sponsors of the new Act propose to add new restrictions on boycotts “fostered or imposed” by an international governmental organization (IGO), such as the European Union or the United Nations. Violations are punishable by exorbitant fines and up to 20 years in prison.

This amendment would seriously threaten fundamental First Amendment freedoms and discourage U.S. individuals, businesses, nonprofits or others from supporting boycotts for Palestinian rights. Even if the bill were amended to remove penalties, its passage would still send a message that political boycotts for Palestinian rights are disfavored by the government, causing a severe chilling effect on constitutionally protected speech.

The Act would chill protected speech despite the fact that under its terms, it should not reach the vast majority of boycott activities related to Israeli government policies. Most boycotts for Palestinian rights are not conducted in response to a call for boycott from a foreign country or

¹ The EAA expired in 2001. 50 U.S.C. §4622 (1977). It has been purportedly continued by executive order.

IGO, but are acts of conscience seeking justice and equality for Palestinians and Israel's compliance with international law. Indeed, people across the United States are increasingly using strategies involving boycott, divestment and sanctions (BDS) to pressure Israel to respect Palestinian rights.

The United States has a long and rich history of boycotts being used to take collective action to advance social justice and secure civil and human rights. Boycotts helped end racial segregation in the United States and apartheid in South Africa. More recently, boycotts helped end a regressive North Carolina law targeting transgender people, and boycott and divestment campaigns have been organized to end university investments in the private prison and fossil fuel industries.

The U.S. Supreme Court has ruled that peaceful political boycotts are protected by the First Amendment.² The government may not enact laws that would punish those who support political boycotts or compromise the right to support political boycotts.

The Act's chief Senate sponsor, Senator Benjamin L. Cardin, has written that the Act does not target political boycotts.³ Instead, he claims, it merely expands preexisting law to prohibit U.S. businesses from complying with boycott requirements imposed by IGOs. In other words, he argues that the bill does not prohibit political speech but targets "commercial conduct," which is afforded a lower level of constitutional protection.⁴

Senator Cardin's interpretation fails to consider the following:

- *Political speech activities would be directly prohibited by the Act.*
The Israel Anti-Boycott Act would directly prohibit political speech activities, in violation of the First Amendment. Consider the situation of a human rights organization that distributes research on companies operating in illegal West Bank settlements. This organization could be in violation of the Act if the organization's intent is to support a call by an IGO to boycott settlements.
- *The Act would empower overzealous presidential administrations to target supporters of political boycotts.*
We have no doubt that the Act would be used as a pretext for overzealous presidential administrations, lobbied by Israel advocacy groups (including those that support this bill), to investigate and even punish supporters of Palestinian rights, whether or not they actually support a call for boycotts by an IGO, which they must do to trigger the Act. Arab and Muslim communities will likely face the brunt of this potential for overbroad enforcement.

² *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

³ Ben Cardin, Setting the Record Straight: Nothing in the Israel Anti-Boycott Act restricts constitutionally-protected free speech, Medium, July 20, 2017, <https://medium.com/@SenatorBenCardin/setting-the-record-straight-nothing-in-the-israel-anti-boycott-act-restricts-constitutionally-13bfa7428d8>.

⁴ Although one provision of the EAA was upheld on commercial speech grounds, the law was never challenged for its restrictions on political speech. *Briggs & Stratton Corp. v. Baldrige*, 728 F. 2d 915 (7th Cir. 1984). As described in this document, the Israel Anti-Boycott Act would significantly increase the law's infringement on political speech.

From 2014 through 2016, Palestine Legal responded to 650 incidents of suppression nationwide targeting speech supportive of Palestinian rights, an additional 200 requests for legal assistance in anticipation of such incidents, and dozens of efforts to enact federal, state and local laws aimed at punishing BDS activism and chilling speech supportive of Palestinian rights.⁵ Palestine Legal and the Center for Constitutional Rights documented this pattern of suppression of Palestinian rights advocacy in a 2015 report, *The Palestine Exception to Free Speech: A Movement Under Attack in the U.S.*⁶

As such, our belief that the Act, if enacted, would be enforced in this way is based on a well-researched pattern of suppression of First Amendment-protected speech and actions in support of Palestinian rights involving heightened government surveillance, investigations and prosecutions of individuals due to their support for Palestinian freedom, as well as private harassment and targeting, including by organizations that support the Act.

- *The Act will have the effect of chilling First Amendment-protected political speech.* Despite Senator Cardin’s efforts to insist the Israel Anti-Boycott Act doesn’t target political conduct, the leading lobby group for U.S. support of Israel, America Israel Public Affairs Committee (AIPAC), itself frames it as a measure to “Combat the BDS Movement.”⁷ In the past two years, 21 states have enacted laws aimed at punishing participation in political boycotts for Palestinian rights.⁸ Together with these state laws, the Act will create a severe chilling effect on people across the country who are otherwise inclined to support First Amendment-protected boycotts for Palestinian rights, or who are merely curious to learn more. The wave of anti-BDS legislation, promoted by Israel advocacy groups to undermine the movement for Palestinian rights in the United States aims to send a clear signal that support for Palestinian rights is disfavored by our government and is potentially punishable.

Statements by state officials and Israel advocates illustrate their intent to thwart grassroots boycott campaigns. For example, when a state senator in Washington introduced an anti-BDS bill, he said, “If students want to protest on campus and do what students do, that’s just fine. But we’ll settle the question for them, the adults in [the] legislature.”⁹ The leader of one Israel advocacy group boasted, “[w]hile you were doing

⁵ Palestine Legal, Year-in-Review: Palestine Legal Responded to 258 Incidents in 2016, *available at*, <http://palestinelegal.org/2016-report>.

⁶ Palestine Legal and Center for Constitutional Rights, *The Palestine Exception to Free Speech: A Movement Under Attack in the U.S.* (2015), *available at* <https://www.palestinelegal.org/the-palestine-exception>.

⁷ See AIPAC, Fight The Boycott of Israel, <http://www.aipac.org/learn/legislative-agenda/agenda-display?agendaid=%7BB499D12C-C5ED-4CA6-93CF-61266D842328%7D>.

⁸ www.RightToBoycott.org.

⁹ Dyer Oxley, Senator: Colleges are being used as ‘politically-correct batons,’ MyNorthwest.com, Jan. 2, 2017, <http://mynorthwest.com/500618/senator-baumgartner-bds-bill>.

your campus antics, the grown-ups were in the state legislature passing laws that make your cause improbable.”¹⁰

Amending the Act to reduce the associated penalties or otherwise will not solve the underlying problems listed above, which illustrate how it is unconstitutional. We call on members of Congress who currently support the Act to withdraw their sponsorship. And we call on all members of Congress to publicly oppose the Israel Anti-Boycott Act and to affirm the First Amendment right to support political boycotts – including those aimed at achieving justice and equality for Palestinians.

Signatories (listed alphabetically)

- American-Arab Anti-Discrimination Committee
- American Muslims for Palestine
- Center for Constitutional Rights
- Council on American-Islamic Relations
- Defending Rights and Dissent
- Jewish Voice for Peace
- National Lawyers Guild
- Palestine Legal
- U.S. Campaign for Palestinian Rights
- U.S. Palestinian Community Network

¹⁰ Eitan Arom, As BDS opponents move from campuses to state capitols ,California is up next, JNS.org, April 13, 2016, <http://www.jns.org/latest-articles/2016/4/13/as-bds-opponents-move-from-campus-to-state-capitols-california-is-up-next-1#.VzyMuULfjww=>.