

Oppose the amended Israel Anti-Boycott Act

Updated March 23, 2018

We are a diverse coalition of over 100 civil and human rights organizations writing to express our strong opposition to the Israel Anti-Boycott Act (S. 720 and H.R. 1697) (“the Act”). Recent amendments to the bill alleviate its most draconian aspects, but do not solve its underlying constitutional infirmities, as described below.

We call on members of Congress to publicly oppose this unconstitutional 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.

Summary

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, further, 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.¹ The Act prohibits a variety of actions, including participating in boycotts as well as “furnishing information” that could be used to further or support a boycott. Violations are punishable by criminal financial penalties of up to \$1 million.²

The Act, even as amended, would seriously threaten fundamental First Amendment freedoms by prohibiting companies (including sole proprietorships), organizations, and their employees from engaging in First Amendment-protected conduct. While the amended bill no longer covers individuals acting in their personal capacity, it continues to cover ethical business owners seeking to follow socially responsible practices by aligning their business practices with EU and UN recommendations regarding, for example, businesses operating in illegal Israeli settlements. It could also affect employees of companies and nonprofit organizations, as described below.

The First Amendment “savings clause” tacked on to the amended Act does nothing to solve its fundamentally flawed premise and the constitutional defects that remain. The U.S. Supreme Court has long held that political boycotts are protected by the First Amendment,³ and a federal court recently blocked Kansas from enforcing an anti-boycott law targeting boycotts for Palestinian rights.⁴ The judge in that case noted that

the conduct the Kansas Law aims to regulate is inherently expressive. It is easy enough to associate plaintiff’s conduct with the message that the boycotters believe Israel should

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

² The amended bill removed prison sanctions, but draconian criminal financial penalties remain.

³ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

⁴ *Koontz v. Watson*, 5:17-cv-04099. Kansas is one of twenty-four states to enact a law in recent years aimed at punishing those who engage in boycotts for Palestinian rights. For more information, visit www.righttoboycott.org.

improve its treatment of Palestinians. And boycotts—like parades—have an expressive quality. Forcing plaintiff to disown her boycott is akin to forcing plaintiff to accommodate Kansas’s message of support for Israel.⁵

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 said that the Act does not target political boycotts.⁶ 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.⁷ This is not an accurate portrayal of the amended bill.

Senator Cardin’s assessment of the amended Act is incorrect for the following reasons:

- *Political speech activities would be directly prohibited by the amended Act.*
The Israel Anti-Boycott Act would directly prohibit political speech activities, in violation of the First Amendment. Under its terms, the Act 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 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 boycotts, divestment and sanctions (BDS) as tactics to pressure Israel to respect Palestinian rights.

Nevertheless, the Act will prohibit some First Amendment protected political speech. Consider the situation of a human rights organization that distributes research on companies operating in illegal West Bank settlements. This organization and its employees could be in violation of the Act – and face criminal financial penalties – if their actions were taken to support a call by an IGO to boycott settlements.

Consider also a sole proprietorship – an individual lawyer for example – who seeks to align their one-person business with international law and ethical standards, as espoused by the UN Human Rights Council. This individual could face severe criminal financial

⁵ Id; See also the ACLU’s letter to Senators Crapo and Brown regarding that organization’s firm opposition to the Israel Anti-Boycott Act, available at <https://www.aclu.org/letter/aclu-letter-revised-version-s720-israel-anti-boycott-act>.

⁶ 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-the-israel-anti-boycott-act-restricts-constitutionally-13bfa7428d8>.

⁷ 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.

penalties for refusing to purchase goods made by companies that operate in illegal West Bank 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 their actions “comply with, further, or support” an IGO action, as the Act requires. Arab and Muslim communities will likely face the brunt of this potential for overbroad enforcement.

From 2014 through 2018, Palestine Legal responded to nearly 1000 incidents of suppression nationwide targeting speech supportive of Palestinian rights, an additional 257 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.⁸ 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.*⁹

As such, our belief that if enacted, the Act would be enforced to intimidate and chill advocacy for Palestinian rights is based on a well-researched pattern of suppression of First Amendment-protected speech and actions in support of Palestinian rights. This involves 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.*
In the past two years, 24 states have enacted laws aimed at punishing participation in political boycotts for Palestinian rights.¹⁰ 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-boycott 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 lawmakers and advocates who support anti-boycott legislation illustrate their intent to thwart political boycott campaigns. For example, when the Act was first

⁸ Palestine Legal, Year-in-Review: Palestine Legal Responded to 308 Suppression Incidents in 2017, Nearly 1000 in Last 4 Years, available at, <http://palestinelegal.org/2017-report>.

⁹ 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>.

¹⁰ www.RightToBoycott.org.

introduced, co-sponsor Senator Rob Portman stated in a press release, “[t]his bipartisan legislation sends a clear message that politically-motivated boycotts of Israel are unacceptable to the United States.”¹¹ Similarly, when a state senator in Washington introduced an anti-boycott bill, he said, “[i]f 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.”¹² The leader of one Israel advocacy group boasted, “[w]hile you were doing your campus antics, the grown-ups were in the state legislature passing laws that make your cause improbable.”¹³

Conclusion

Recent amendments to the Act do not solve the underlying problems listed above, which illustrate its unconstitutional purpose and provisions.

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 Act and to affirm the First Amendment right to support political boycotts – including those aimed at achieving justice and equality for Palestinians.

Signatories

National Organizations

- American-Arab Anti-Discrimination Committee
- American Friends Service Committee
- American Muslims for Palestine
- Al-Awda: The Palestine Right to Return Coalition
- Center for Constitutional Rights
- CODEPINK
- Council on American-Islamic Relations
- Defending Rights and Dissent
- Friends of Sabeel – North America
- International Jewish Anti-Zionist Network
- Jewish Voice for Peace
- Jews for Palestinian Right of Return
- Labor for Palestine
- National Lawyers Guild and the National Lawyers Guild Palestine Sub-Committee

¹¹ Press Release, Roskam, Vargas, Portman, Cardin Introduce Anti-BDS Bill, March 23, 2017, <https://roskam.house.gov/Roskam-Vargas-Portman-Cardin-BDS>.

¹² Dyer Oxley, Senator: Colleges are being used as ‘politically-correct batons,’ MyNorthwest.com, Jan. 2, 2017, <http://mynorthwest.com/500618/senator-baumgartner-bds-bill>.

¹³ 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-campuses-to-state-capitols-california-is-up-next-1#.VzyMuULfjww>.

- Palestine Legal
- Palestinian Youth Movement
- Project South
- Unitarian Universalists for Justice in the Middle East
- United Church of Christ Palestine Israel Network
- United Methodists for Kairos Response
- USA-Palestine Mental Health Network
- U.S. Campaign for the Academic and Cultural Boycott of Israel
- U.S. Campaign for Palestinian Rights
- U.S. Council of Muslim Organizations
- U.S. Palestinian Community Network
- War Resisters League

State Organizations

Alabama

- Birmingham Peace Project

California

- 14 Friends of Palestine
- Arab American Civic Council
- Buena Vista United Methodist Church
- Chico Palestine Action Group
- Claremont Students for Justice in Palestine
- Culture and Conflict Forum
- Democrats for Palestinian Equal Rights
- Friends of Sabeel, Sacramento Region
- International Committee for Peace, Justice and Dignity
- Israel Palestine Task Force of the California-Nevada Annual Conference of the United Methodist Church
- Jewish Voice for Peace, Bay Area Chapter
- Jewish Voice for Peace, Los Angeles Chapter
- Jewish Voice for Peace, Sacramento Chapter
- Jewish Voice for Peace, San Diego Chapter
- Northern California International Solidarity Movement
- QUIT: Queers Undermining Israeli Terrorism
- Sacramento Area Peace Action
- Sacramento Regional Coalition for Palestinian Rights
- Students for Justice in Palestine at California State University, Fullerton
- Students for Justice in Palestine at UCLA
- United Methodists' Holy Land Taskforce
- Wellstone Progressive Democrats of Sacramento

Connecticut

- Connecticut Peace and Solidarity Coalition
- Greater New Haven Peace Council
- Ironworkers Local 15
- Jewish Voice for Peace, New Haven Chapter
- Promoting Enduring Peace
- Tree of Life Educational Fund
- We Refuse to be Enemies

Florida

- Jewish Voice for Peace, South Florida Chapter
- National Lawyers Guild, South Florida Chapter

Illinois

- Arab Jewish Partnership for Peace and Justice in the Middle East
- Chicago Faith Coalition on Middle East Policy
- Committee for Just Peace in Israel-Palestine
- Jewish Voice for Peace, Chicago Chapter
- National Lawyers Guild, Chicago Chapter
- Students for Justice in Palestine at UIUC

Kentucky

- Israel Palestine Mission Network of the Presbyterian Church (USA)

Maryland

- Baltimore Palestine Solidarity
- Committee for Palestinian Rights
- Freedom2Boycott Maryland
- Friends of Sabeel DC Metro Area

Massachusetts

- Adalah Justice Project
- Alliance for Water Justice in Palestine
- Boston Coalition for Palestinian Rights
- Common Ground for Justice and Peace in the Holy Land, Inc.
- Jewish Voice for Peace, Boston Chapter
- Massachusetts Peace Action
- Watertown Citizens for Peace, Justice and the Environment

Missouri

- Mid-Missourians for Justice in Palestine

New York

- Adalah-NY: Campaign for the Boycott of Israel
- Black Movement-Law Project
- Brooklyn for Peace
- Columbia/Barnard Jewish Voice for Peace

- Columbia University Apartheid Divest
- Columbia University Students for Justice in Palestine
- Community of Living Traditions at Stony Point Center
- Concerned Families of Westchester
- Jewish Voice for Peace, Westchester Chapter
- Jews Say No!
- The Majlis Ash Shura (Islamic Leadership Council) of New York
- Muslim Peace Fellowship
- Palestine Solidarity Alliance of Hunter College
- Peace Action New York State
- Queers Against Israeli Apartheid
- Samidoun Palestinian Prisoner Solidarity Network
- Syracuse Peace Council
- WESPAC Foundation
- Westchester Coalition against Islamophobia

Oregon

- Americans United for Palestinian Human Rights
- Individuals for Justice
- Lutherans for Justice in the Holy Land
- Occupation-Free Portland

Pennsylvania

- Bryn Mawr Peace Coalition

Virginia

- Palestinian Christian Alliance for Peace
- Virginia Coalition for Human Rights

Vermont

- Green Mountain Solidarity with Palestine

Washington

- Vancouver for Peace