



## **FAQ: What to Know About the New York State Human Rights Law’s “Boycott” Provision**

New York human rights activists are increasingly advocating for boycotts to pressure Israel to comply with international law and to influence public opinion nationally, with the hope that they will shift United States policy in favor of respecting the rights of Palestinians. As this movement grows, so too have efforts to condemn and suppress it, including legal threats to intimidate and silence critics of Israel.

One such effort claims that New York State’s Human Rights Law (NYSHRL) – which prohibits discriminatory business practices – makes it illegal for New Yorkers to engage in political and human rights boycotts of Israeli goods.<sup>1</sup> These legal threats grossly misstate the law. The Supreme Court has clearly held that political boycotts are protected First Amendment activity. This means that political, social, and economic campaigns to de-shelve products from Israel, China or any other country are protected speech and may not be punished by the state.

### **Are political, social, and economic boycotts of Israel and Israeli goods protected by the First Amendment of the U.S. Constitution?**

**Yes.** Boycotts have long played a significant role in U.S. history, and the Supreme Court has held that political and civil rights boycotts are protected under the First Amendment. In the landmark civil rights case *NAACP v. Claiborne Hardware Co.*,<sup>2</sup> a local branch of the NAACP boycotted white merchants in Claiborne County, Mississippi in order to pressure elected officials to adopt racial justice measures. The merchants fought back, suing the NAACP for interference with business. Ultimately, the Supreme Court found that “the boycott clearly involved constitutionally protected activity” through which the NAACP “sought to bring about political, social, and economic change.” It is important to remember that while we often perceive the First Amendment as protecting “speech,” the Supreme Court has long recognized “speech” to encompass both verbal communication and expressive conduct.<sup>3</sup>

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<sup>1</sup> See, for example, Shurat HaDin’s letter to the Park Slope Food Coop, June 1, 2015, <http://israelawcenter.org/wp-content/uploads/2014/09/Letter-to-Park-Slope-Food-Coop-June-1-2015.pdf>.

<sup>2</sup> 458 U.S. 886 (1982).

<sup>3</sup> See *Stromberg v. California*, 283 U.S. 359 (1931); *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503 (1969); *Texas v. Johnson*, 491 U.S. 397 (1989).

## **What is New York State’s Human Rights Law and what does it say about boycotts?**

The purpose of New York’s Human Rights Law is to ensure that all individuals in New York are “afforded an equal opportunity to enjoy a full and productive life” by protecting against discrimination, prejudice, and intolerance.<sup>4</sup> The NYSHRL is remedial in nature<sup>5</sup> – its purpose is to correct societal injustices based on the belief that equal opportunity is not only beneficial for the individual but also for society and democracy as a whole.<sup>6</sup> For example, it prohibits certain types of discrimination in employment, public accommodation, and housing. The New York Human Rights Law also includes a provision that prohibits boycotts based on “race, creed, color, national origin, sexual orientation, military status, sex, or disability.”<sup>7</sup>

## **Are political, social, and economic boycotts of Israel, Israeli goods, and companies that profit from or are complicit in the occupation of Palestine prohibited by NYSHRL?**

**No.**

First, boycotts that target institutions or companies because of their relationship with Israel or because they profit from the Israeli occupation of Palestine are not covered by the NYSHRL, and are therefore not prohibited by it. The law prohibits boycotts that discriminate against someone because of their “protected class,” such as race or national origin. The boycott against Israel is employed because of the Israeli government’s failure to comply with international rights and its failure to respect the rights of Palestinians.

Second, political boycotts targeting Israel or Israeli companies to effect political, social, or economic change are not prohibited by NYSHRL because they are protected by the First Amendment. Courts have held that laws and regulations may incidentally infringe on protected speech only under limited circumstances.<sup>8</sup> Anti-discrimination laws that prohibit boycotts designed to achieve unlawful objectives *may* be constitutionally permissible.<sup>9</sup> However, boycotts designed to secure governmental action to vindicate legitimate rights – just like the NAACP boycott in *Claiborne* – cannot be prohibited by government regulation. Such boycotts are unquestionably protected by the First Amendment.

Indeed, the Supreme Court has held that “speech on public issues” – like Israeli policies and Palestinian human rights – “occupies the highest rung of the hierarchy of First Amendment

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<sup>4</sup> N.Y. Exec. Law, Article 15 § 290(3).

<sup>5</sup> *Scott v. Massachusetts Mut. Life Ins. Co.*, 86 N.Y.2d 429, 436 (“a liberal reading of this type of remedial statute is warranted . . .”).

<sup>6</sup> N.Y. Exec. Law, Article 15 § 290(3) (“[T]he state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that the failure to provide such equal opportunity . . . not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. . .”).

<sup>7</sup> N.Y. Exec. Law, Article 15 § 296(13).

<sup>8</sup> In *United States v. O'Brien*, 391 U.S. 367, 376-77 (1968) the Supreme Court laid out a 4-part test to determine whether such regulations are permissible: “if it is in the constitutional power of the Government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.”

<sup>9</sup> *See, for example, Jews for Jesus, Inc. v. Jewish Community Relations Council, Inc.*, 968 F.2d 286 (2d Cir. 1992).

values,”<sup>10</sup> and is entitled to special protection. Remember, too, that the Constitution is the law of the land and overrules any federal, state, or local laws that conflict with it.

It is worth noting, too, that New York City has its own Human Rights Law that is almost identical to the NYSHRL. One difference is that New York City’s law *explicitly* exempts “any form of expression that is protected by the First Amendment.”<sup>11</sup>

### **Can lawsuits be brought under the New York Human Rights Law for political and human rights boycotts of Israel or Israeli goods?**

Meritless lawsuits are always a possibility. Legal bullying is one of many tactics that Israel advocates use against Palestinian human rights activists. There are individuals, organizations, and law firms that will threaten to sue – and may actually sue – purely as a bullying tactic, even if their underlying claims are unfounded and fly in the face of basic democratic principles and established First Amendment law.

However, using the New York State Human Rights Law to challenge First Amendment-protected activity is unlikely to succeed in court. In fact, no court has ruled that boycotts of Israel or Israeli goods violate the NYSHRL or any other law. In 2013, Shurat HaDin, an Israeli law group, threatened legal action against the American Studies Association,<sup>12</sup> warning that academic boycotts of Israel also violated the Human Rights Law. No suit was filed, much less won.

More importantly, as the Center for Constitutional Rights stated in a recent blog post about the lawsuit against the Olympia Food Co-op’s boycott of Israeli goods, “Legal bullying will sometimes serve its purpose of intimidating people of conscience into silence, but it ultimately cannot stop the growing BDS movement in support of Palestinian rights.”<sup>13</sup>

### **What support is available to those who face legal threats?**

If you have specific concerns about potential legal actions or other backlash against you, please contact Palestine Legal at [info@palestinelegal.org](mailto:info@palestinelegal.org). For more information, see <http://palestinelegal.org>.

*This document addresses recent accusations against boycott campaigns in New York. This is general legal information, not specific legal advice. Do not rely on these materials without first seeking the advice of an attorney regarding your particular situation and facts. Only a licensed attorney, reviewing your individual facts, may render legal advice. This information is provided as a public resource for information purposes only. Nothing in this resource should be taken to create an attorney-client relationship between you and Palestine Legal or the Center for Constitutional Rights.*

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<sup>10</sup> *Claiborne*, 458 U.S. 886 at 913 (quoting *Carey v. Brown*, 447 U. S. 455 (1980)).

<sup>11</sup> NYC Admin. Code § 8-107(18).

<sup>12</sup> See Letter: CCR, Palestine Legal Respond to Lawsuit Threat Against ASA, Calling it “Baseless,” Jan. 21, 2014, <http://palestinelegal.org/news/2014/01/21/letter-ccr-psls-respond-to-lawsuit-threat-against-asa-calling-it-baseless>.

<sup>13</sup> Maria LaHood, “Legal Bullying May Chill Speech, but Ultimately Cannot Stop a Movement,” Center for Constitutional Rights, June 17, 2015, <http://ccrjustice.org/home/blog/2015/06/17/legal-bullying-may-chill-speech-ultimately-cannot-stop-movement>.