# Unconstitutional … and bad for California

**To: California state legislators**
**From: Coalition to stop AB 1551 & AB 1552 (see list of endorsing organizations)**
**Date: Feb. 3, 2016**
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## An attack on free speech

Assembly Bills 1551 and 1552, introduced by Assembly Member Travis Allen on January 4, 2016, would penalize those who engage in "politically motivated" boycotts as a nonviolent means to influence Israel to end its occupation and human rights abuses. Under these bills, the state could not invest in entities that comply with foreign boycotts against Israel (AB 1551), and could not contract with entities that engage in "discriminatory" boycotts (AB 1552). Although AB 1552 does not explicitly refer to Israel, press releases make clear that it is a companion bill to 1551 and the goals are the same: to shield the Israeli government from criticism of its policies.

The bills fail to take into account that boycotts and other economic measures based on support for social justice are by nature "politically motivated," and have been recognized by the Supreme Court as political speech that "occupies the highest rung of the hierarchy of First Amendment values." See *NAACP v. Claiborne Hardware*, 458 U.S. 886 (1982).

Moreover, regardless of one's views on Israel and Palestine, it would be blatantly unconstitutional for California to punish political speech by withholding the potential benefit of financial relationships with the state based on the speakers' viewpoints. See *Rutan v Republican Party of Illinois,* 497 U.S. 62 (1990).

Boycotts aimed at securing civil and human rights are an integral part of American history, beginning with the Boston Tea Party and through the Montgomery bus boycott against segregation, grape boycotts in support of farm labor rights, boycotts of companies enabling South African apartheid, and current divestment campaigns against fossil fuel and private prison companies. The boycotts imposed by AB 1551 and 1552, however, not only do not seek to secure social justice – they aim to use the heavy hand of the state to unconstitutionally punish and silence those who do.

## Contrary to longstanding U.S. foreign policy

AB 1551 includes "Israeli-controlled territories" – the Palestinian areas under Israeli occupation for almost half a century – as a prohibited target of human rights boycotts or divestment measures. But successive U.S. administrations have reiterated that Israeli settlements in the West Bank are illegitimate and a serious "obstacle to peace." In 2015, the State Department declared that the U.S. government "has never defended or supported Israeli settlements or activity associated with them, and, by extension does not pursue policies or activities that would legitimize them." Neither should California.

## Who would be blacklisted?

A growing number of businesses, major church denominations, charitable foundations, university student governments, unions, and socially responsible investors have all heeded the grassroots call to boycott or take other economic measures against companies and institutions complicit in Israel's human rights abuses. In addition, a number of multinational corporations under fire for such complicity have ended their business operations in the occupied Palestinian territories or in Israel altogether.

All could be blacklisted under AB 1551 and/or AB 1552. This would foreclose valuable investment opportunities for state pension funds, and would prohibit essential contractual relationships with, for example, large corporations, churches that run public charitable programs, and contractors who employ workers represented by unions that have voted for divestment.

## California can do better

Similar legislation passed or pending in other states will likely be found constitutionally wanting. But California has the opportunity to lead the way in blocking the true agenda of such bills, which is to enforce uncritical support of Israeli policies. The Legislature must uphold precious constitutional liberties while acting in the best interests of the people of California and their democratic institutions.