

To: California state legislators

From: Coalition to Stop AB 2844 (formerly AB 1551 & AB 1552 – see attached endorser list)

Date: May 4, 2016

We write to strongly oppose AB 2844. Despite amendments, this bill remains a misguided, costly attempt to unconstitutionally punish First Amendment-protected speech. Please see the main points of opposition below, and for more detail, in the attached legal memo.

As long as the bill aims to punish or chill protected speech, no amendments will satisfy the concerns expressed by the Assembly Judiciary Committee analysis that its First Amendment concerns are "very serious and perhaps insurmountable."

California should avoid the costly and unconstitutional minefield that AB 2844 will lead the state into. We urge you to shelve this bill.

AB 2844 would impose substantial burden and expense on state and local government.

- It would require the Attorney General's Office (AG) to investigate and continually monitor the many thousands of companies that contract or might potentially contract with the state or local public agencies, to discover whether they start or stop engaging in activity the bill seeks to deter.
- The AG would then have to maintain and publish a blacklist of such companies, notify those included, hear their appeals and defend the state in court if they sue -- which is likely to happen, given how vague and confusing the criteria in AB 2844 are.
- Every state and local government agency and special district that contracts with private business for any purpose would have to disqualify potential low bidders that appear on the AG blacklist.
- They would also have to seek out new partners when a contract with a blacklisted company ends -- even if the company was performing well and its contract could have been renewed in a much simpler, less costly process.
- The state would have to cover all such expenses incurred by local agencies.
- The state would also have to pay for much more complex litigation when the constitutionality of AB 2844 is challenged.

The latest amendments do not salvage AB 2844; it is still unconstitutional

- The title (California Combating the Boycott, Divestment, and Sanctions of Israel Act of 2016) and a lengthy introduction make clear the bill still singles out boycott of Israel as its true target, contrary to the Judiciary analysis recommendation that it be generalized.
- Even if it were so generalized, AB 2844 still violates the First Amendment by penalizing protected political speech based on viewpoint discrimination. The amendments purport to provide that a political boycott is to be penalized only if combined with a proscribable "discriminatory business practice." But discrimination in public contracting is already illegal, and the statutes to which the amended bill refers for defining applicable discriminatory practices were enacted for an entirely different purpose: to coordinate with federal law restricting foreign boycotts affecting international trade.
- AB 2844's vagueness and irrelevant references create significant uncertainty in its implementation. Together with its singling out Israel for protection and its critics for condemnation and special scrutiny, the bill as a whole fosters an unconstitutional "chilling effect" on protected speech.