

**Q: IS AB 2844 REALLY ONLY ABOUT ENFORCING EXISTING DISCRIMINATION LAW, OR IS IT A THREAT TO FREE SPEECH?**

**A: Proponents are trying to have it both ways.**

- On the one hand, to reassure other legislators and the administration, they say the bill targets only those who commit unlawful discrimination in employment, housing or public accommodations under existing California law. Indeed, AB 2844 explicitly cites the Unruh and Fair Employment and Housing acts as the sole bases for its provisions.
- What proponents can't explain, then, is how this narrow reading of AB 2844 wouldn't make it a wasteful redundancy. Discrimination in these areas is already prohibited, after all. Appropriations analyses in both houses and the Department of Finance, in opposing the bill, underlined this observation.
- In the floor debate, on the other hand, Sen. Block then contradicted himself by saying the bill would target "boycott of any nation based on discrimination," conveniently ignoring that California law does not protect Israel or any country from discrimination -- only its own residents.
- Assembly Members Allen and Bloom, Sen. Block and others all went much further even after the bill was disguised as an "anti-discrimination" measure, loudly denouncing in committees and on the floors what they called the "BDS movement," and thus harkening back to the bill's originally stated purpose: to bar contracting with entities that engage in boycott of Israel in any form. That was axed in the Assembly after Judiciary Committee analysts found it blatantly unconstitutional.

*For in-depth legal analysis, please see the series of memos, written by attorneys with the opposition coalition that includes the Center for Constitutional Rights, the National Lawyers Guild and Jewish Voice for Peace, as AB 2844 and its predecessors went through multiple rewrites, at <http://palestinelegal.org/california>. Also posted there are the Assembly Judiciary analysis and an opposition memo from California ACLU.*

**Q: WHAT ARE OUTSIDE SPONSORING ORGANIZATIONS SAYING THAT SHOWS WHAT THEY REALLY WANT FROM AB 2844?**

**A: They make no pretense at all that it's about discrimination under existing California law.**

- Outside sponsors of AB 2844, both guiding and echoing the authors, continue to appeal to their constituencies by describing AB 2844 according to its original *raison d'être*. Such legislative efforts around the country are " 'another tool in our toolbox' in the fight against BDS," according to a prime sponsor, the Israeli-American Coalition for Action. Immediately after Senate passage, the coalition referred specifically to the California measure as "the anti-BDS bill."
- In a Sept. 12 email blast urging followers to call the Governor's Office (<http://bit.ly/2cl3ung>), JPAC, the Jewish Public Affairs Committee of California, prime lobbying arm of the Israel-aligned establishment, echoed Sen. Block's misrepresentation of what kind of "discrimination" AB 2844 targets, saying it "would prohibit the State of California from doing business with entities that engage in discriminatory boycotts targeting Israel." The JPAC alert even restored the original name of AB 2844: the "California Combating the Boycott, Divestment, and Sanctions of Israel Act of 2016, stricken back in May in the Assembly, which made a valiant effort to neutralize the bill, eliminating mention of Israel and seeking an Attorney General opinion as to whether it could be constitutional to bar contracting with businesses that boycott other countries.
- Such declarations underscore what remains the proponents' purpose, which is to promulgate the false notion that political boycott or divestment campaigns aimed at exposing and changing Israeli policies constitute unlawful discrimination. The strategy is clearly to then cite AB 2844 in flooding state agencies with complaints to score propaganda points and to intimidate their political adversaries. As Brooke Goldstein, director of the Lawfare Project, a central player in the nationwide

effort to promote bills like AB 2844, declared recently regarding their purpose: "The goal is to make the enemy pay and to send a message, a deterrent message, that similar actions such as those that they engage in will result in massive punishments."

- Such a statement is a classic example of unconstitutional chilling of protected speech. The bill's entire purpose remains an unconstitutional effort to stifle a vital conversation regarding policies of other countries and U.S. foreign policy. The language about discrimination and the purported mandate to investigate and possibly prosecute entities that commit it is wholly a subterfuge that contributes nothing whatsoever to efforts against actual discrimination.

#### **Q: WHO IS FINANCING THE ANTI-BDS CAMPAIGN?**

**A: The same groups dedicated to defending every Israeli government policy against growing criticism by stigmatizing and suppressing the critics – and some well-known donors.**

- A prescient news story (<http://bzfd.it/2cvowXQ>) in September 2014 outlined plans by AIPAC, the prominent leading lobby group, to write and push for legislation like AB 2844 on the state and federal levels. The first such bills were introduced last year.
- At a Las Vegas summit called by conservative megadonor Sheldon Adelson in June 2015, he and others pledged "up to \$50 million for the fight, aimed mostly at campuses." <http://bit.ly/2cms63G>. In a message to the same event, Israeli Prime Minister Netanyahu promised \$26 million from his government's budget. <http://bit.ly/1HeyTrI>
- The efforts to intimidate campus critics have not been particularly successful. A current story in the online Forward describes the latest in a series of instances where free speech has been upheld: <http://bit.ly/2cLqJft>
- A Jewish Telegraphic Agency report in February 2016 (<http://bit.ly/2cdLn9N>) reports on doubts and divisions even within mainstream Jewish organizations as to the advisability of pursuing harsh anti-BDS legislation and other measures, mostly because of their threat to the First Amendment.

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#### **THE BOTTOM LINE**

*AB 2844 as passed is very different from what was first introduced as a straightforward bill to punish entities for expressing viewpoints its authors don't like. Solid opposition materialized from more than 100 groups, some that engage in the political speech under attack and others that take no position on Israeli policies but care deeply about the First Amendment. They were backed by conscientious legislative staff who sounded alarms about vital issues of democracy, free speech and wise use of state resources.*

*From the start, many legislators expressed privately a desire that the bill would just "go away," but in the end, politics and power relations led most to vote aye. Sixteen were brave enough to vote no or abstain. Two members of the Legislative Jewish Caucus declined to sign on as co-authors.*

*Thanks to the opposition and serious misgivings, AB 2844 could be passed only disguised as a contorted and nonsensical bill pretending to be about discrimination. But in the end, the fight against unlawful discrimination and bigotry is too important to be misused for ulterior motives, especially when the goal is to silence opposing points of view -- all at the cost of wasting valuable state resources.*