



## Frequently Asked Questions: California's AB 2844 & the Right to Boycott

On September 24, 2016, Governor Brown signed AB 2844 into law.<sup>1</sup> AB 2844 is commonly referred to as California's anti-BDS law even though boycott, divestment, and sanctions (BDS) campaigns are not mentioned in the final version of the bill.

An earlier version of the bill was titled "California Combating Boycott, Divestment and Sanctions of Israel Act," and it required the state to blacklist and impose a public-contract ban against any contractor that supported boycotts of Israel. After thousands of people across the state protested, and legal experts concluded that the bill unconstitutionally punished political speech, AB 2844 was repeatedly revised and whittled down. There is now a confusing divide between the intent of the law, which its author and sponsors still say is to combat BDS,<sup>2</sup> and the law's actual text, which focuses on compliance with existing state anti-discrimination laws.

It is crucial for BDS supporters to understand the very limited scope of this law.

**The bottom line is that AB 2844 will not affect the vast majority of advocates for Palestinian rights in California. Moreover, boycotting and divesting from Israel to protest its policies toward Palestinians and international law violations does not violate California's anti-discrimination laws and is protected by the U.S. Constitution.**

### **What does AB 2844 do?**

Under AB 2844, if you submit a bid or proposal to enter into a state contract worth \$100,000 or more, or if you renew an existing state contract, you must certify – under penalty of perjury – two things:

- First, that you are in compliance with California's Unruh Civil Rights Act (Unruh) and Fair Employment and Housing Act (FEHA). These laws are already on the books and they prohibit discrimination in employment, housing, or public accommodation against persons in California on the basis of sex, race, religion, national origin and other protected classes.
- Second, that any "policy" you have against a "sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel" – is not used to discriminate in violation of Unruh and FEHA.

**If you are not bidding on or proposing a state contract worth \$100,000 or more, AB 2844 does not affect you.**

### **Are BDS campaigns for Palestinian rights discriminatory under California law?**

**No.** The movement for Palestinian rights is not motivated by discrimination, but seeks to end discrimination. BDS is one tactic to achieve freedom, justice, and equality for Palestinians. BDS campaigns are a protest of Israeli government policies and violations of international law.<sup>3</sup> BDS

<sup>1</sup> The text of AB 2844 is available at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB2844](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2844).

<sup>2</sup> See, e.g., Press Release, Governor Signs Measure to Counter Discriminatory Boycotts of Israel, Assemblymember Richard Bloom, Sept. 25, 2016, <http://asmdc.org/members/a50/news-room/press-releases/governor-signs-measure-to-counter-discriminatory-boycotts-of-israel>.

<sup>3</sup> For more information about BDS and various existing campaigns, visit [www.bdsmovement.net](http://www.bdsmovement.net).

campaigns do not target individuals based on religion or any other protected classification, but rather, companies and institutions that facilitate and profit from Israel's human rights violations.

### **Do California's anti-discrimination laws protect Israel against political boycotts?**

**No.** California's anti-discrimination laws protect persons in California against discrimination in employment, housing and public accommodations. They do not protect any foreign nation from political protest by Californians.

### **I support BDS and/or I am participating in a BDS campaign, and I do plan to bid on or propose a contract with California worth \$100,000 or more. Does AB 2844 affect me?**

#### **Yes and no.**

Because BDS campaigns do not discriminate in violation of Unruh and FEHA, BDS supporters can accurately certify that they are in compliance with these laws.<sup>4</sup>

But it is important to recognize the disconnect between the intent behind AB 2844 (to chill and stigmatize BDS activism) and its wording. Because of this disconnect, and because Israel-aligned organizations have threatened to use AB 2844 to instigate investigations against BDS supporters,<sup>5</sup> businesses and organizations that engage in boycott campaigns for Palestinian rights and that bid on or propose state contracts could be exposed to unfair government scrutiny. Perjury is a felony crime, and these investigations – and possible subsequent prosecutions – should be considered seriously. Remember, unless you are discriminating in employment, housing, or public accommodation in violation of Unruh or FEHA, you are not committing perjury under AB 2844.

### **I'm a small business owner who supports BDS and I currently have a contract with California worth \$100,000 or more that pre-dates AB 2844. Does AB 2844 affect me?**

Not unless or until you apply to renew your contract, at which point you will be required to make the certification described above for a contract worth \$100,000 or more.

### **Is my support for BDS campaigns protected by the First Amendment of the U.S. Constitution?**

**Yes.** The U.S. Supreme Court has long held that boycotts to bring about political, economic, and social change – like boycotts for Palestinian rights – are protected by the First Amendment. Although, a wave of legislative measures attempting to chill boycotts for Palestinian rights has swept the U.S.,<sup>6</sup> the first such law to be challenged was blocked by a federal judge in Kansas in January 2018 because "the First Amendment protects the right to participate in a boycott like the one punished by the Kansas law."<sup>7</sup> For further information, visit [www.palestinelegal.org/legislation](http://www.palestinelegal.org/legislation).

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<sup>4</sup> If you are in fact engaged in discriminatory conduct, you should not certify that you are in compliance with AB 2844's requirements.

<sup>5</sup> See, e.g., Eitan Arom, California's Senate passes bill targeting Israel boycotts, Jewish Journal, Aug. 24, 2016, <http://www.jewishjournal.com/california/article/californias-senate-passes-bill-targeting-israel-boycotts> ("Now we have another tool in our toolbox' in the fight against BDS, said Shawn Evenhaim, chairman of the Israeli-American Coalition for Action (IAX), which has led the move to pass AB 2844. Evenhaim said that once the bill becomes law, IAX would look to see that it's used to halt discriminatory boycotts against Israel.")

<sup>6</sup> Since 2014, at least 102 bills have been introduced in the U.S targeting speech supportive of Palestinian rights. As of February 2018, 24 states have enacted anti-boycott measures. See [www.palestinelegal.org/legislation](http://www.palestinelegal.org/legislation).

<sup>7</sup> American Civil Liberties Union, "In First Judge Blocks Kansas Law Aimed at Boycotts of Israel," January 30, 2018, <https://www.aclu.org/news/first-judge-blocks-kansas-law-aimed-boycotts-israel>.

For more information about AB 2844, including links to legal memos outlining constitutional concerns with the law, visit [www.palestinelegal.org/california](http://www.palestinelegal.org/california).

If you have any questions or concerns, please contact [info@palestinelegal.org](mailto:info@palestinelegal.org).

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