Oppose the amended Israel Anti-Boycott Act

Updated Sept. 19, 2018

We are a diverse coalition of over 100 civil and human rights organizations writing to express our strong opposition to the Israel Anti-Boycott Act (S. 720 and H.R. 1697) (“the Act”). We opposed the original version of the Act\(^1\) as well as proposed amendments that were unveiled (but never adopted) in the Spring of 2018.\(^2\) We now write to oppose the third iteration of the bill, offered as a substitute bill by Congressman Ed Royce in June 2018.\(^3\) The newest amendments do not solve the Act’s underlying constitutional infirmities, as described below.

We call on members of Congress to publicly oppose this unconstitutional bill and to affirm the First Amendment right of all people in the United States to support political boycotts as a means to achieve justice and equality for Palestinians.

Summary

The Act requires the amendment of existing regulations issued under the anti-boycott provisions of the federal Export Administration Act (EAA), enacted in 1979.\(^4\) Those provisions prohibit specific actions taken to comply with, further, or support a boycott of “countries friendly to the United States” that is “fostered or imposed” by a foreign country. The EAA was intended to apply to the Arab League boycott of Israel.\(^5\) The Act, which explicitly names boycotts of Israel as its intended target, would require the President to adopt new restrictions on boycotts fostered or imposed by International Governmental Organizations (IGOs) such as the European Union or the United Nations. The Act prohibits a variety of actions, including participating in boycotts as well as “furnishing information” that could be used to further or support a boycott. Violations are punishable by criminal and civil penalties.

The Act, even as amended, would seriously threaten fundamental First Amendment freedoms by targeting political boycotts for Palestinian rights initiated by the EU or UN, and prohibiting companies (including sole proprietorships), organizations, and their “owners, officers, directors, employees or agents” from taking action to “comply with, further, or support” such boycotts. While the amended bill no longer covers individuals acting in their personal capacity, it would continue to cover ethical business owners seeking to follow socially

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responsible practices. For example, if a business owner or their agent were to cease doing business with companies operating in illegal West Bank settlements, and did so in response to an EU or UN boycott or “restrictive trade practice,” which the Act describes broadly to include merely urging companies not to operate in illegal settlements, they would be in violation of this law. It could also affect employees of companies and nonprofit organizations, as described below.

The U.S. Supreme Court has long held that political boycotts are protected by the First Amendment.\textsuperscript{6} A federal court recently blocked Kansas from enforcing an anti-boycott law targeting boycotts for Palestinian rights.\textsuperscript{7} The judge in that case noted that,

the conduct the Kansas Law aims to regulate is inherently expressive. It is easy enough to associate plaintiff’s conduct with the message that the boycotters believe Israel should improve its treatment of Palestinians. And boycotts—like parades—have an expressive quality. Forcing plaintiff to disown her boycott is akin to forcing plaintiff to accommodate Kansas’s message of support for Israel.\textsuperscript{8}

The government may not enact laws that discriminate against certain viewpoints, as the Kansas court noted, or that would punish those who support political boycotts or compromise the right to support political boycotts.

The amended version of the Act adds language, aimed at alleviating First Amendment concerns that civil liberties groups have raised, stating that only commercial speech, which receives a lower level of constitutional protection than political speech, can be used “as evidence to prove a violation.” But the types of boycotts targeted by the Act – boycotts for Palestinian rights – are inherently political boycotts aimed at effecting change for Palestinians living under Israeli military occupation and subjugation for over seven decades, and the Act prohibits a wide variety of actions to comply with, further, or support these political boycotts.

The Act goes far beyond the original EAA, relevant provisions of which were intended to protect US companies from a mandatory Arab League boycott of Israel that some US companies complied with for purely commercial reasons.\textsuperscript{9} Unlike with the original EAA, there is no compulsory boycott at issue that would be covered by the Act’s expansion of the EAA, and any company or organization that supports boycotts initiated by IGOs would be doing so for ethical and political reasons, in support of Palestinian rights.

We therefore remain opposed to the Act for the following reasons:

- \textit{Political speech activities would be directly prohibited by the amended Act, in violation of the First Amendment.}

\textsuperscript{6} \textit{NAACP v. Claiborne Hardware Co.}, 458 U.S. 886 (1982).

\textsuperscript{7} \textit{Koontz v. Watson}, 5:17-cv-04099. Kansas is one of twenty-four states to enact a law in recent years aimed at punishing those who engage in boycotts for Palestinian rights. For more information, visit \url{www.righttoboycott.org}.

\textsuperscript{8} Id; See also the ACLU’s letter to Senators Crapo and Brown regarding that organization’s firm opposition to the Israel Anti-Boycott Act, available at \url{https://www.aclu.org/letter/aclu-letter-revised-version-s720-israel-anti-boycott-act}.

\textsuperscript{9} See supra, note 5.
Under its terms, the Act should not reach many of the boycott activities related to Israeli government policies. Generally, boycotts for Palestinian rights are not conducted in response to a call for boycott from a foreign country or IGO, but are acts of conscience seeking justice and equality for Palestinians and Israel’s compliance with international law. Indeed, people across the United States are increasingly using boycotts as tactics to pressure Israel to respect Palestinian rights.

Nevertheless, the Act will directly prohibit some First Amendment protected political speech. Consider the situation of a human rights organization that distributes research on companies operating in illegal West Bank settlements. This organization and its employees could be in violation of the Act – and face criminal or civil penalties – if they adopt an organizational policy (or distribute information about a policy) not to purchase goods based on an IGO’s recommendations for a boycott or restrictive trade practices related to Israeli abuses of Palestinian rights.

Consider also a sole proprietorship – an individual lawyer for example – who seeks to align their one-person business with international law and ethical standards, as suggested by the UN Human Rights Council. This individual could be considered in violation of the Act for refusing to purchase goods made by companies that operate in illegal West Bank settlements.

- **The Act would empower overzealous presidential administrations to target supporters of political boycotts.**

  We have no doubt that the Act would be used as a pretext for overzealous presidential administrations, lobbied by Israel-aligned groups (including those that support this bill), to investigate and even punish supporters of Palestinian rights, whether or not their actions “comply with, further, or support” an IGO action, as the Act requires. Arab and Muslim communities will likely face the brunt of this potential for overbroad enforcement.

From 2014 through 2018, Palestine Legal responded to nearly 1000 incidents of suppression nationwide targeting speech supportive of Palestinian rights, an additional 257 requests for legal assistance in anticipation of such incidents, and dozens of efforts to enact federal, state and local laws aimed at punishing BDS activism and chilling speech supportive of Palestinian rights.10 Palestine Legal and the Center for Constitutional Rights documented this pattern of suppression of Palestinian rights advocacy in a 2015 report, *The Palestine Exception to Free Speech: A Movement Under Attack in the U.S.*11

As such, our belief that if enacted, the Act would be enforced to intimidate and chill advocacy for Palestinian rights is based on a well-researched pattern of suppression of

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First Amendment-protected speech and actions in support of Palestinian rights. This involves heightened government surveillance, investigations and prosecutions of individuals due to their support for Palestinian freedom, as well as private harassment and targeting, including by organizations that support the Act.

- *The Act will have the effect of chilling First Amendment-protected political speech.* In the past two years, 25 states have enacted laws aimed at punishing participation in political boycotts for Palestinian rights. Together with these state laws, the Act will create a severe chilling effect on people across the country who are otherwise inclined to support First Amendment-protected boycotts for Palestinian rights, or who are merely curious to learn more. The wave of anti-boycott legislation, promoted by Israel and Israel-aligned groups to undermine the movement for Palestinian rights in the United States, aims to send a clear signal that support for Palestinian rights is disfavored by our government and is potentially punishable.

Statements by lawmakers and advocates who support anti-boycott legislation illustrate their intent to thwart political boycott campaigns. For example, when the Act was first introduced, co-sponsor Senator Rob Portman stated in a press release, “[t]his bipartisan legislation sends a clear message that politically-motivated boycotts of Israel are unacceptable to the United States.” Similarly, when a state senator in Washington introduced an anti-boycott bill, he said, “[i]f students want to protest on campus and do what students do, that’s just fine. But we’ll settle the question for them, the adults in [the] legislature.” The leader of one Israel advocacy group lobbying for these laws similarly boasted, “[w]hile you were doing your campus antics, the grown-ups were in the state legislature passing laws that make your cause improbable.”

**Conclusion**

Recent amendments to the Act do not solve the underlying problems listed above, which illustrate its unconstitutional purpose and provisions.

We call on members of Congress who currently support the Act to withdraw their sponsorship. And we call on all members of Congress to publicly oppose the Act and to affirm the First Amendment right to support political boycotts – including those aimed at achieving justice and equality for Palestinians.

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Signatories

National Organizations

- American-Arab Anti-Discrimination Committee
- American Friends Service Committee
- American Muslims for Palestine
- Al-Awda: The Palestine Right to Return Coalition
- Center for Constitutional Rights
- CODEPINK
- Council on American-Islamic Relations
- Defending Rights and Dissent
- Friends of Sabeel – North America
- International Jewish Anti-Zionist Network
- Jewish Voice for Peace
- Jews for Palestinian Right of Return
- Labor for Palestine
- National Lawyers Guild and the National Lawyers Guild Palestine Sub-Committee
- Palestine Legal
- Palestinian Youth Movement
- Project South
- Unitarian Universalists for Justice in the Middle East
- United Church of Christ Palestine Israel Network
- United Methodists for Kairos Response
- USA-Palestine Mental Health Network
- U.S. Campaign for the Academic and Cultural Boycott of Israel
- U.S. Campaign for Palestinian Rights
- U.S. Council of Muslim Organizations
- U.S. Palestinian Community Network
- War Resisters League

State Organizations

Alabama
- Birmingham Peace Project

California
- 14 Friends of Palestine
- Arab American Civic Council
- Buena Vista United Methodist Church
- Chico Palestine Action Group
- Claremont Students for Justice in Palestine
- Culture and Conflict Forum
- Democrats for Palestinian Equal Rights
Friends of Sabeel, Sacramento Region
International Committee for Peace, Justice and Dignity
Israel Palestine Task Force of the California-Nevada Annual Conference of the United Methodist Church
Jewish Voice for Peace, Bay Area Chapter
Jewish Voice for Peace, Los Angeles Chapter
Jewish Voice for Peace, Sacramento Chapter
Jewish Voice for Peace, San Diego Chapter
Northern California International Solidarity Movement
QUIT: Queers Undermining Israeli Terrorism
Sacramento Area Peace Action
Sacramento Regional Coalition for Palestinian Rights
Students for Justice in Palestine at California State University, Fullerton
Students for Justice in Palestine at UCLA
United Methodists’ Holy Land Taskforce
Wellstone Progressive Democrats of Sacramento

Connecticut
Connecticut Peace and Solidarity Coalition
Greater New Haven Peace Council
Ironworkers Local 15
Jewish Voice for Peace, New Haven Chapter
Promoting Enduring Peace
Tree of Life Educational Fund
We Refuse to be Enemies

Florida
Jewish Voice for Peace, South Florida Chapter
National Lawyers Guild, South Florida Chapter

Illinois
Arab Jewish Partnership for Peace and Justice in the Middle East
Chicago Faith Coalition on Middle East Policy
Committee for Just Peace in Israel-Palestine
Jewish Voice for Peace, Chicago Chapter
National Lawyers Guild, Chicago Chapter
Students for Justice in Palestine at UIUC

Kentucky
Israel Palestine Mission Network of the Presbyterian Church (USA)

Maryland
Baltimore Palestine Solidarity
Committee for Palestinian Rights
Freedom2Boycott Maryland
Friends of Sabeel DC Metro Area
Massachusetts
- Adalah Justice Project
- Alliance for Water Justice in Palestine
- Boston Coalition for Palestinian Rights
- Common Ground for Justice and Peace in the Holy Land, Inc.
- Divestment Task Force, New England Conference, United Methodist Church
- Jewish Voice for Peace, Boston Chapter
- Massachusetts Peace Action
- Watertown Citizens for Peace, Justice and the Environment

Missouri
- Mid-Missourians for Justice in Palestine

New York
- Adalah-NY: Campaign for the Boycott of Israel
- Black Movement-Law Project
- Brooklyn for Peace
- Columbia/Barnard Jewish Voice for Peace
- Columbia University Apartheid Divest
- Columbia University Students for Justice in Palestine
- Community of Living Traditions at Stony Point Center
- Concerned Families of Westchester
- Jewish Voice for Peace, Westchester Chapter
- Jews Say No!
- The Majlis Ash Shura (Islamic Leadership Council) of New York
- Muslim Peace Fellowship
- Palestine Solidarity Alliance of Hunter College
- Peace Action New York State
- Queers Against Israeli Apartheid
- Samidoun Palestinian Prisoner Solidarity Network
- Syracuse Peace Council
- WESPAC Foundation
- Westchester Coalition against Islamophobia

Oregon
- Americans United for Palestinian Human Rights
- Individuals for Justice
- Lutherans for Justice in the Holy Land
- Occupation-Free Portland

Pennsylvania
- Bryn Mawr Peace Coalition

Virginia
- Palestinian Christian Alliance for Peace
• Virginia Coalition for Human Rights

**Vermont**
• Green Mountain Solidarity with Palestine

**Washington**
• Rachel Corrie Foundation for Peace and Justice
• Vancouver for Peace
• Washington Freedom to Boycott