

PROTECT THE RIGHT TO BOYCOTT: OPPOSE ANTI-BDS LEGISLATION

In response to the 2005 call from Palestinian civil society, supporters of Palestinian rights have coalesced around the call for boycott, divestment and sanctions (BDS) against Israel until it complies with its international legal obligations. As campaigns to boycott and divest from entities complicit in Israel's human rights abuses have gained momentum in the United States, Israel and its allies have sought to undermine these accountability efforts, including via repressive legislation. Since 2014, U.S. lawmakers have introduced over 200 bills targeting boycotts for Palestinian rights. Though only a fraction of these bills passed, more than 30 states currently have anti-BDS laws on the books. The goal of these laws is to suppress advocacy for Palestinian rights and shield Israel from criticism. **Lawmakers should reject anti-BDS laws as a threat to the First Amendment and our right to dissent more broadly.**

ANTI-BDS LAWS EXPLAINED

Anti-BDS legislation generally attempts to use economic coercion to discourage people from supporting Palestinian rights. This primarily takes the form of prohibitions on state contracts with or state investment in individuals and entities that boycott Israel in support of Palestinian rights. Some anti-BDS laws require states to generate “blacklists” of companies that support BDS, which the state will refuse to invest in or contract with, or require potential government contractors to pledge that they do not and will not boycott Israel. Other anti-boycott legislation has threatened to defund student organizations and academic associations that express support for BDS. The Israel Anti-Boycott Act, introduced in Congress several times since 2017, goes further and has proposed criminal penalties and even jail time for providing information to UN bodies collecting data on entities profiting from illegal Israeli settlements.

HOW ANTI-BDS LAWS CURTAIL EXPRESSION

Anti-BDS laws often force people to choose between expressing meaningful support for Palestinian rights and a government benefit. They have resulted in the loss or denial of government contracts, the loss of jobs and educational opportunities, and government censorship. In 2018, Bahia Amawi, a Palestinian-American children's speech pathologist who had been working in Texas public schools since 2009, lost her job after she refused to sign a pledge that she would not boycott entities doing business in Israel or its illegal settlements. Amawi felt she could not sign the certification as a matter of conscience.

Citing constitutional concerns, a judge blocked enforcement of Texas' anti-BDS law after Amawi filed a lawsuit against the school district. In response, Texas lawmakers amended the law to make it harder for individuals like Amawi to challenge it.

While these laws by their own terms affect a very narrow type of boycott activity, they are often invoked to chill and intimidate Palestinian rights advocates more broadly. For example, in 2017, dozens of New Yorkers active in the movement for Palestinian rights received messages threatening “legal proceedings” under failed New York anti-BDS legislation if these individuals did not stop supporting BDS. It was later revealed that the messages came from a private security company led by ex-Mossad agents. Confusion over the scope or deliberate misapplication of these laws has resulted in chilling a broader range of expression beyond the scope of anti-BDS laws.

THE CONSTITUTION PROTECTS BOYCOTTS FOR JUSTICE

The Supreme Court has been clear that boycotts for justice are a protected form of speech under the First Amendment. **The government is not permitted to chill or condition the receipt of government benefits on the requirement that an individual forgo core political speech activity.** Federal courts in Arizona, Georgia, Kansas, and Texas have blocked states from enforcing anti-BDS laws over concerns that the laws infringe on First Amendment rights. To date, only one of these laws has been upheld on its constitutional merits. That decision breaks from longstanding history and precedent and fails to recognize the political expression at the core of the act of boycotting. The issue is being appealed to the Supreme Court.

ANTI-BDS LAWS HARM OTHER JUSTICE MOVEMENTS

Laws suppressing expression critical of Israel set a dangerous precedent not only for Palestinian rights activists in the United States, but for anyone seeking to effect social, economic and political change. From anti-racist and reproductive rights organizing to activism for climate justice and gun control, anti-BDS laws are being used as a template to attack the right to boycott and dissent. Anti-boycott bills are part of a broader legislative crackdown on protest and dissent. Hundreds of bills aimed at silencing protest, curbing Indigenous rights and environmental activism, and punishing protests on college campuses have swept across the country in recent years. These legislative attacks—often pushed by the same right-wing groups—come alongside law enforcement tactics aimed at surveilling and criminalizing protest and dissent. These anti-protest laws, including those targeting BDS, attempt to subvert fundamental legal protections in order to silence social justice advocates.

Anti-BDS laws have galvanized activists for Palestinian rights and civil rights allies who recognize this legislation as an illegitimate attempt to prevent people from expressing support for freedom and justice for Palestinians. Numerous coalitions have formed to help fight anti-BDS bills at the state and federal level, and many have been successful. We urge lawmakers to protect our fundamental right to engage in collective action to effect change: oppose anti-boycott legislation.

Go to Palestine Legal's Legislation website (<https://legislation.palestinelegal.org/>) to learn more about:

- How to connect with a coalition in your state
- Background on BDS
- Right to Boycott
- Who Is Behind These Repressive Laws?
- Legal Challenges to Anti-Boycott Laws