

MEMO

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The Combating BDS Act and Free Speech

Some critics of congressional efforts to combat the Boycott, Divestment, and Sanctions (BDS) movement against Israel have claimed that the Combating BDS Act infringes on First Amendment rights. This is categorically false. The legislation in no way impedes the right of any American to boycott or criticize Israel.

Combating Boycotts of Israel Does Not Infringe on Free Speech

- The Combating BDS Act simply clarifies that state and local governments have the right to counter boycotts of Israel without fear that they are preempting the authority of the federal government. The bill recognizes that states and local governments may act—it does not urge or require them to do so.
 - Congress has had a long track record of opposing anti-Israel boycotts like the Arab League boycott of Israel. And two-dozen states have either passed legislation or moved through executive order to oppose current BDS efforts.
 - The Combating BDS Act does not apply to individuals. It only covers actions by state and local governments that adopt policies responding to actions by corporations, companies, business associations, partnerships, or trusts.
 - The Combating BDS Act does not seek to limit the rights of individuals, even those acting as government contractors, to personally engage in boycotts of Israel. They can refuse to buy Israeli goods or do business with Israel in their private capacity.
 - Corporations are also free to express their opposition to Israeli policies. The legislation only covers corporations' commerce-related or investment-related activities.
 - States have a long-standing right not to invest or contract with companies whose actions are at variance with state law or policy. If individuals wish to challenge particular anti-boycott laws in court, nothing in this law would prevent those suits. Some state laws have in fact been successfully challenged in court, but none of these challenges pertain to the content or intent of the Combating BDS Act.
 - U.S. courts have further found that the First Amendment does not prohibit Congress from barring compliance with foreign boycotts that conflict with U.S. interests, or restricting information Americans can provide to foreign governments with respect to foreign boycotts. See: *Trane Co. v. Baldrige*, 552 F. Supp. 1378 (W.D. Wis. 1983) and *Briggs and Stratton Corp. v. Baldrige*, 728 F.2d 915 (7th Cir. 1984).
 - The Combating BDS Act has attracted widespread bipartisan support in both houses of Congress.
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