



Five Ways the Israel Anti-Boycott Act Could Criminalize Americans' First Amendment-Protected Right to Boycott

On July 17, the American Civil Liberties Union (ACLU) [denounced](#) the Israel Anti-Boycott Act ([S.720](#) and [H.R.1697](#)) as a “direct violation of the First Amendment.” The bill could impose draconian criminal penalties of \$1 million in fines and 20 years in prison against US persons who support, or whose actions “have the effect of furthering or supporting,” a boycott of Israel or its illegal settlements called for by international governmental organizations. The ACLU concluded the bill is unconstitutional because it seeks to “punish U.S. persons based solely on their expressed political beliefs.”

The ACLU letter set off a vigorous debate between the bill’s proponents and opponents over constitutional concerns. Assurances from the bill’s proponents that individuals will not be criminalized for violating the underlying law which this bill seeks to amend ring hollow for several reasons:

- Individuals cannot comply with the Arab League boycott of Israel. Only corporations can comply with this boycott in their international commercial dealings and be penalized under existing US law for doing so. **Despite the fact that no individual has been imprisoned to date, the Commerce Department’s history of enforcing this law offers no valid precedent for how it would be enforced if it were expanded to include boycotts called for by international governmental organizations, which individuals could support.**
- The authors of this legislation cannot guarantee that individuals will not be criminalized for boycotting Israel or its illegal settlements if this bill becomes law. They have clearly written the bill in a way which opens the door to criminal prosecution against individuals, civil society institutions, and corporations as detailed below. Once the bill becomes law, **the decision to prosecute under the terms of this law will rest in the hands of Executive Branch agencies tasked with issuing regulations and enforcing its provisions.**
- It would be reckless and irresponsible for Congress to empower the Trump administration with a legal tool to enable it to imprison Americans for 20 years for expressing a political viewpoint in light of its dangerous signs of fascism and authoritarianism. The Department of Justice (DOJ) recently demanded the IP addresses of 1.3 million visitors to a website which coordinated protests during the inauguration. If the Trump administration’s DOJ is investigating Americans for the simple act of visiting a website, then imagine what it could do with a law which explicitly enables it to prosecute individuals for boycotting Israel. The intent to punish dissent is there; at the behest of now high-ranking Trump administration officials, the GOP inserted into its [platform](#) last year a plank to enact “effective legislation to thwart” the civil society call for boycott, divestment, and sanctions (BDS). The plank serves as an explicit acknowledgement of the GOP’s aim to interfere with and quash Americans’ First Amendment-protected right to engage in boycotts.

Largely overshadowed in the debate over this bill is the [widespread and growing](#) support in the United States for BDS campaigns aimed at achieving Palestinian rights, especially within churches, college campuses, academic associations, trade unions, and among cultural workers.

The US Campaign for Palestinian Rights (USCPR) is the leading coalition organizing BDS campaigns at the national level, as well as supporting the local BDS campaigns of the member groups of our coalition. As such, USCPR would like to draw upon its practical experience organizing and supporting BDS campaigns to inform Members of Congress of the wide range of individuals who could potentially be subject to criminal penalties under the terms of this bill.

1. Church leaders criminalized for supporting the boycott of Israeli settlement goods.

In recent years, mainstream church denominations representing tens of millions of Americans, such as the United Methodist Church, Presbyterian Church (USA), and the United Church of Christ, have passed resolutions to boycott Israeli settlement products. After the publication of the UN Human Rights Council's (UNHRC) database of Israeli settlement corporations, a denomination passing a similar boycott resolution would "have the effect of furthering" what is defined in this bill as a boycott. Implementing regulations for this law could imprison church leaders whose denominations support boycotting Israeli settlements, along with church members who want to implement their denominations' resolutions.

2. Students criminalized for organizing de-shelving of Israeli products on campus.

Students have successfully organized on several campuses, such as Swarthmore College, Earlham College, and Wesleyan University, to remove Sabra hummus from campus dining facilities in protest of its parent company's material support for an Israeli military unit which has committed grave human rights abuses against Palestinians. In addition, Pitzer College passed by-laws prohibiting the use of student funds for companies or products complicit in Israeli military occupation. Under implementing regulations of this law, students running similar campaigns in the future to boycott Israeli settlement products listed in the UNHRC's database could face prison time for doing so and universities could be fined for de-shelving those products that students refuse to buy.

3. CEOs criminalized for not doing business with Israeli settlement corporations.

Various BDS campaigns have called upon retail stores to de-shelve products from illegal Israeli settlements. For example, BDS campaigners pressed Macy's to stop carrying SodaStream, a beverage carbonation device which was being produced in an Israeli settlement. Following boycotts and a decline in sales, Macy's stopped carrying the product, although the company never acknowledged that it did so in response to consumer pressure. After the publication of the UNHRC database of Israeli settlement corporations, implementing regulations for this law could force companies to choose between suffering reputational risk and declining sales or facing hefty fines, and CEOs and board members could be imprisoned for dropping products from Israeli settlements.

4. Investors criminalized for divesting from Israeli settlement corporations.

In recent years, pension giant TIAA-CREF and large individual investors, such as George Soros and Abigail Disney, have sold their shares of SodaStream in direct response to BDS campaigns highlighting the corporation's complicity in dispossessing Palestinians from their land. After the publication of the UNHRC's database, implementation of regulations for this law could see individual investors or portfolio managers fined and/or imprisoned for divesting stock from Israeli settlement companies, as their actions would further a boycott.

5. Individuals criminalized for supporting international governmental boycotts.

Under the terms of the bill and possible implementing regulations, an individual expressing support on social media for international governmental organizations' efforts to identify and label Israeli settlement products could face criminal penalties. Posting something as innocuous on Facebook as: "I appreciate the UN Human Rights Council's decision to compile a database of Israeli settlement corporations because I do not want to purchase those products" would have the effect of furthering that boycott, as would tweeting "I support the EU labeling Israeli settlement products." The Israel Anti-Boycott Act opens the door to the possibility of individuals facing 20 years in prison for expressing an opinion on social media.