What Should the Maryland General Assembly Know About Anti-BDS Legislation?

What Is BDS?

- Boycott, Divestment, and Sanctions (BDS) is an international movement that stems from a 2005 call from Palestinian civil society for civil society to boycott, divest from, and sanction Israel until three demands are met—recognizing the right of return of Palestinian refugees, ending Israel’s military occupation of land outside its 1967 borders, and ending discrimination within Israel against Palestinians with Israeli citizenship.
- Proponents of BDS argue that Israel has an obligation under international law to meet these demands and thus view themselves as a human rights movement.
- Proponents of BDS, including the initial 2005 call from Palestinian Civil Society, argue that BDS is necessary, because governments and international institutions have failed to get Israel to comply with international human rights law and it is the responsibility of people to act when governments fail.
- While the BDS call is modeled after the South African boycott and thus calls for broad boycotts against Israeli institutions, nothing in it calls for discrimination against individuals solely because of their national origin, religion, or ethnicity.

Why is anti-BDS legislation a bad idea?

- The Supreme Court has ruled that boycotts for social, political, and economic change are political speech and are thus protected under the First Amendment.
- The State of Maryland cannot constitutionally ban boycotts nor can it penalize individuals for their participation in them.
- The Supreme Court has explicitly ruled that the government cannot deny someone a benefit, because of his or her constitutionally protected speech.
- By barring the pension fund from investing in companies that participate in the BDS movement, Maryland would be denying a benefit in order to penalize individuals or companies for having engaged in political speech.
- Additionally, the state cannot discriminate against individuals, because of their viewpoint.
- An anti-BDS bill would punish individuals because of their views on Palestinian human rights. This is constitutionally impermissible viewpoint discrimination.
- Since the First Amendment protects boycotts and prohibits viewpoint discrimination, anti-BDS legislation is unconstitutional.
**What can the Maryland General Assembly do to protect human rights defenders?**

- Boycotts are a powerful tool for nonviolent change and have been used during the American Revolution, as well as by abolitionist and the civil rights movements.
- In the past, the Maryland General Assembly endorsed both the grape boycott and the boycott of South Africa.
- Baltimore City divested from companies doing business in Apartheid South Africa.
- Instead of passing legislation that violates the First Amendment rights of Marylanders, the General Assembly should act proactively to protect human rights defenders.
- The Maryland General Assembly should pass legislation prohibiting the state of Maryland from penalizing individuals for participating in boycotts.
- The Bill of Rights Defense Committee and Defending Dissent Foundation, working with the Montgomery County Civil Rights Coalition, has drafted model legislation—the “Human Rights Defender Protection Act” that does just that.
- The Maryland anti-BDS legislation isn’t being proposed in a vacuum; it is part of a national effort to use state legislatures to penalize individuals for engaging in boycotts and exercising their First Amendment rights.
- Maryland has a chance to publicly take a stand for the principles of freedom of speech and the promotion of human rights.

**Why can’t the state “boycott the boycotters?”**

- Proponents of anti-BDS legislation argue that state and local governments have the right to decide which companies to do business with. Baltimore City divested its pension funds from Apartheid South Africa.
- While state and local governments can engage in boycott or divestment measures, state and local government action is constrained by the Constitution, including the First Amendment. Any measure aimed at suppressing political speech or discriminating against a particular viewpoint violates the First Amendment.
- Since anti-BDS legislation is aimed at suppressing, political speech it violates the First Amendment and is not analogous to the Baltimore City example or other instances of state or local governments pursuing socially responsible investment.

*The Bill of Rights Defense Committee and Defending Dissent Foundation is a national organization dedicated to defending the rights and liberties guaranteed by the U.S. Constitution. As part of our grassroots network, we have activists working locally across the country, including in the State of Maryland. To learn more visit us at [www.bordc.org](http://www.bordc.org).*