Is the Israel Anti-Boycott Act an infringement of free speech?

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Palestinian advocates use the language of free speech, human rights, social justice and international law to rationalize the irrational and immoral – financially supporting terrorists while promoting economic discrimination against the State of Israel. This manipulative use of universalistic terms hides the boycotters’ real agenda: the elimination of the State of Israel.

Congress is now deliberating on whether to update 1970s-era legislation against boycotting Israel with the Israel Anti-Boycott Act that would target the international Boycott, Divestment, and Sanctions (BDS) movement.

Some of the same misleading arguments raised against the act were also used to discredit the Taylor Force Act, a proposed piece of legislation that would punish the Palestinian Authority if it continues to financially support and incentivize terrorists and their families with American taxpayer dollars.

Today, there is bipartisan support in Congress for updating the 1979 Export Administration Act prohibiting American corporations from cooperating with boycotts against Israel by foreign nations, the EU or the UN. No American should be compelled to acquiesce to a boycott ordered by a foreign entity.

Enter Democratic Senator Ben Cardin of Maryland, ranking member of the Foreign Relations Committee, and Republican Senator Rob Portman of Ohio, who introduced the updated legislation to combat the 21st-century boycotters of Israel.

The “Israel Anti-Boycott Act” is bipartisan legislation currently supported by 42 senators and 247 members of the House.

The ACLU, J Street and Moveon.org among other progressive groups are lobbying legislators to withdraw their support, claiming the legislation seeks to impose an unconstitutional restriction on free speech.

Senators Portman and Cardin responded to the ACLU, writing, “Nothing in the bill restricts constitutionally protected free speech or limits criticism of Israel... it is narrowly targeted at commercial activity and is based on current law that has been constitutionally upheld.”

Let’s be clear: the right to express one’s point of view, no matter how contentious or odious, is a constitutionally protected right.

However, the attempt to expand the meaning of speech to include commercial transactions is a transparent maneuver to stop this particular piece of legislation that would bar economic discrimination against Israel.

According to Scholars for Middle East Peace, “Legal analysts have shown... the amendment only... prohibits actual commercial boycotts... The distinction between expression, which cannot be regulated, and commercial conduct, which can be, is vital.”

Boycotts against the Jewish state began immediately with its creation in 1948. The Arab oil embargo and economic blackmailing of companies doing business with Israel motivated Congress to pass the Export Administration Act in an attempt to punish the boycotters of Israel and other American allies. The law barred economic discrimination against Israeli businesses, on pain of criminal and financial penalties.

Fast-forward to the 21st century, where the original boycott effort has mutated into the BDS movement, whose endgame is the destruction of Israel not the creation of two states for two peoples.

BDS is a serious and growing problem targeting investment funds, pensions funds and companies doing business in Israel.

Groups already supportive of BDS include various trade unions, municipalities, progressive mainstream churches, and academic organizations.

But the greatest potential threat from BDS may come from the halls of the United Nations and the European Union.

The ACLU claims the proposed legislation is an infringement of free speech. Yet many state legislatures have already passed anti-BDS legislation, going to great lengths not to restrict First Amendment rights.

Now that the legislation has reached the national level, the ACLU wants to include commercial transactions under the banner of speech.

It should be no surprise that the ACLU would be at the forefront in defending the rights of the anti-Israel movement. The ACLU is an advocate of intersectionality, whereby Zionism is stigmatized as being incompatible with everything from feminism to fighting racism. Progressive Zionists are demonized while even the most illiberal BDS supporters are celebrated.

Memo to the ACLU: fighting against Israel’s right to exist meets the State Department definition of antisemitism. Even the UN secretary general said that the “denial of Israel’s right to exist is antisemitism.”

The ACLU says it does not want to “stifle efforts to protest Israel’s settlement policies by boycotting businesses in Israel and the occupied Palestinian territories.” Notice that it doesn’t confine itself to the disputed territories but includes all of Israel, more proof this is not about a two-state solution but supporting the BDS goal of eliminating the Jewish state.

According to the pro-Palestinian website Electronic Intifada, “WESPAC, Adalah-NY, Jewish Voice for Peace-Westchester and Peace Action NY successfully mobilized to make this bill a central issue at New York Senator Gillibrand’s town halls.”

The intimidation is working, as Senator Kristin Gillibrand, a co-sponsor of the original legislation, has withdrawn her support, moving her into alignment with J Street.

Does Senator Gillibrand know these groups are vehemently anti-Israel and antisemitic, on the fringe of the left-wing extreme? J Street, a self-styled “pro-Israel, propeace” organization which reliably comes to the aid of BDS supporters, has expectedly lobbied Congress to oppose the Israel Anti-Boycott Act. Despite claiming that it is opposed to BDS, it is using its considerable voice not to explain the dangers of BDS to the State of Israel, but to support BDS’s rights, advocating engagement through dialogue that lends legitimization to BDS’s antisemitism.

BDS is not about two states or the “occupation,” it is about the destruction of Israel.

The words of BDS co-founder Omar Barghouti say it all: “Definitely, most definitely we [BDS] oppose a Jewish state in any part of Palestine,” and “no Palestinian Supports a Jewish state in Palestine.”

Let’s hope that the rest of Congress will rally in support of this important legislation against international BDS and will not be duped by the ACLU’s dubious freedom of speech argument.