

Background

Organizing American communities around justice for Palestine has historically been met by equally organized attempts to intimidate, harass, and exclude individuals and groups associated with such activities from mainstream political participation. Rooted in what we call the politics of exclusion, this “political racism” originally targeted Arab American community organizing efforts. In one tragic instance, it became violently dangerous with the firebombing of advocates’ offices; and the murder of Palestinian American Alex Odeh for his leadership in the American-Arab Anti-Discrimination Committee in 1985.

Today, many other communities in the United States that advocate for any policy which challenges Israel’s occupation of Palestine, or individuals who speak out against Israel’s human rights violations, or policymakers who advocate credible and just policies towards Israel, are targeted alongside the Arab American community to suppress these movements. The structural exclusion of such groups has had a toxic impact on the consistent application of U.S. law, policy, and reasoned debate. Efforts by the same extreme pro-Israel groups who seek to exclude Palestinian activists have successfully lobbied for exceptions within existing U.S. law to benefit Israel. The broader context these three realities create - the exclusion of pro-Palestinian groups from political discourse, the inconsistent protection of all U.S. citizens’ constitutional rights, and the explicit exceptions to U.S. law granted to Israeli policies - have resulted in a dangerous, anti-democratic, and restricted debate on issues of critical importance to U.S. foreign and domestic policy alike.

The Problem

The chilling effect anti-Palestine groups have had on freedom of speech and freedom of association is frightening and contradictory to the democratic values the United States was founded on. Among the most egregious examples of the suppression of these rights are the efforts targeting the Boycott, Divestment, and Sanction (BDS) movement, college campus activities, and the selective application of U.S. law. These actions - legislative and legal - are being advanced by an incorrect narrative that equates criticism of the Israeli government to anti-Semitic speech.

College Campuses

College campuses serve as an important battleground for grassroots efforts to organize around Palestine and the challenges with which those efforts are met. In response to the growing activity around Boycott, Divestment, and Sanctions actions on college campuses, certain pro-Israel groups have suggested that Middle East Studies programs promote an anti-Israel bias, and are therefore not eligible for Title VI funding. For example, in 2014 the Louis D. Brandeis Center for Human Rights Under Law released a 2014 report insinuating that Middle East studies centers or programs at universities and colleges across the U.S. have promulgated hostile, anti-Israel campus environments.

The Brandeis Center’s original campaign challenged the Department of Education’s (DOE) funding of Middle East studies programs under Title VI of the Higher Education Act. The accusations and legal basis for these claims were broadly found to be erroneous. Facing pressure from all sides, the Department of Education did not change its funding policies or its legal guidance on these civil rights issues. Nonetheless, the campaign to cast Palestinian activism as anti-Semitic has made large gains. Now, the view that college campuses are hot beds for criticism of Israel - and therefore, some argue falsely, anti-Semitic activity - has subtly taken hold. It is now common for media to disastrously cite college activism as evidence of the rise of anti-Semitism in the United States. College activism is even being cited alongside hate crimes like the desecration of Jewish cemeteries, to push forward laws simply meant to silence debate on Israel nationwide.

College students and professors are further under attack by groups that want to punish and ultimately disband student-run organizations that advocate for justice for Palestine.

One such group that is gaining attention is Canary Mission, an anonymous group that lists the names and detailed information of college students who have supported causes such as the BDS movement and Students for Justice in Palestine on its website. Canary Mission claims it combats the “rise in anti-Semitism” on college campuses by profiling people they claim “promote a hatred of the USA and Israel.” Yet, the students who are profiled, including American Jewish students, are only known to have advocated for social justice causes and, for some, simply displayed ethnic pride, not anti-Semitic views. These students are often harassed due to their profiles on Canary Mission and future employment opportunities are threatened.

Federal & State Legislatures

Opponents of Boycott, Divestment, and Sanctions (BDS) activism in the U.S. have been increasingly successful in passing state legislation that seeks to punish businesses and private entities associated with BDS activism in any way. The U.S. Congress has taken up several bills that seek to discredit and smear BDS activism, but none have yet passed. The state versions of the anti-BDS bill have been much more successful. Over 59 anti-BDS bills have been introduced, and 16 states have passed versions of an anti-BDS bill into law. What’s more, many of these anti-BDS bills have made a serious and damaging excursion into foreign policy making. Most bills include language that acknowledges Israeli settlements east of the 1967 green line as legally identical to Israel proper. This language reverses long standing U.S. policy that makes important legal distinctions between illegally occupied land and Israel.

The successes of the state-based campaign to stop BDS activism has sprung copycat campaigns that take the conflation of activism and anti-Semitism even further. Late in 2016, Congress considered a bill that would have explicitly re-defined anti-Semitism to include criticism of Israel in the scope of what constitutes anti-Semitic activity and speech. The “Anti-Semitism Awareness Act of 2016” was introduced by Pennsylvania Senator Bob Casey and was passed without debate by the Senate. The bill died in House when one member had free speech concerns. The bill is expected to be introduced for a second time in 2017. While Congress stalled the bill, much like the anti-BDS bills, several states including South Carolina and Tennessee, have introduced their own legislation to make the erroneous definition the law of the state land.

On March 23, 2017, Senator Benjamin Cardin introduced the Israel Anti-Boycott Act (S. 720). Under this bill, companies will be subject to a fine under the Import-Export Bank Act if it’s determined they are not engaging in business in Israel to cause economic harm to Israel. Boycotts are one of the purest forms of protected speech. This enters unconstitutional territory, especially as it applies to potentially blacklisting and directly harming domestic corporations or international companies with offices operating in the United States.

The campaign against BDS activism and to redefine anti-Semitism are preying on the legitimate concerns of hate crimes and hate speech to quell criticism of Israeli policies - including the occupation. While wrong at any time, this is particularly deplorable at a time when we are seeing a dangerous increase in incidents of anti-Semitism. Free speech is at stake when state legislatures and members of Congress consider these bills.

U.S. Law & Enforcement

There are several key ways policymakers and elected officials have created exceptions and carve-outs for Israel and her supporters within U.S. laws that should not exist.

- First, Israel’s far-right supporters in the United States have benefitted from inconsistent determinations the Internal Revenue Service (IRS) has made to the tax code. The IRS continues to grant tax-exempt status to charitable organizations that contribute to Israeli settlements, contributions that are in violation of the U.S. stated policy towards Israeli settlements built over the 1967 green line. There are numerous 501(c)3 organizations and individuals who enjoy tax benefits for donations made to increased settlement building, whether it is through monetary support of new construction, planting trees, “preserving” nature parks, or supporting civil society organizations like private hospitals, schools, and community centers. All such donations, though innocuous sounding, support an underlying effort that undercuts the U.S.’s position on these settlements, and they should no longer enjoy tax benefits for doing so.
- Israel has also been pushing for exceptional status in U.S. immigration law. The Visa Waiver Program administered by the U.S. Department of State works in cooperation with 37 countries to reciprocally grant temporary visitor waivers to citizens travelling between the two countries. These travel privileges are meant to encourage tourism and ease business travel. The Arab American Institute and our allies have opposed Israel’s entrance to this program in light of Israel’s harassment of Arab American citizens at Israeli ports of entry (namely Ben Gurion Airport) and the frequent denial of entry to U.S. citizens who are politically active, Arab, or Muslim. Based on the history of discrimination in Israel’s immigration practices, Israel does not meet the reciprocity requirement of the Visa Waiver Program. In 2014, serious legislative attempts were made to issue exemptions to the reciprocity requirement for the program (specifically that Israel would not have to meet the refusal rate percent). Based on numerous factors, including the policy of unjustly denying entry of Arab Americans, among other concerns, the attempt to allow Israel to enter the Visa Waiver Program failed.

Moving forward

It is important to enlist Congress in upholding the rule of law across the U.S. without exceptions, carve outs, or contradictions. Specific measures policymakers can take include:

- Oppose state-based bills that aim to suppress international or domestic forms of the “Boycott, Divestment, and Sanctions” movement. These anti-BDS bills seek to limit free speech by outlawing a form of non-violent expression.
- Oppose the erroneous re-definition of anti-Semitism proposed in the 2016 Anti-Semitism Awareness Act. Anti-Semitism is a serious threat to the U.S., but Congress and state legislators must protect free speech, which includes the right to criticize and/or boycott the Israeli government and its policies.
- Contact the Department of Education to reaffirm their support of academic freedom and the importance of Middle East Studies programs on college and university campuses.
- Urge Members of Congress to denounce legislation and policies that seek to criminalize political dissent and freedom of speech, such as the Israel Anti-Boycott Act.