



## Interfaith Communities United for Justice and Peace

3300 Wilshire Blvd. • Los Angeles, California 90010

[www.icujp.org](http://www.icujp.org) • 323.510.7311 • [info@icujp.org](mailto:info@icujp.org)

### **ICUJP Supports the Constitutional Right to Advocate Boycott, Divestment and Sanctions Against the State of Israel**

Interfaith Communities United for Justice and Peace (ICUJP) is committed to the protection of robust and wide-open debate on all issues of public importance, free of government censorship and abridgment of the rights to freedom of speech, freedom of assembly, and freedom of association protected by the First Amendment to the Constitution. Since its founding in September, 2001, in order to promote its mission that "Religious Communities Must Stop Blessing War and Violence," ICUJP has defended the right of the people to protest, dissent, resist and advocate against oppressive policies which foment war, violence, hatred, and discrimination.

Recently, there has been a dangerous rise in efforts to impose government restrictions favoring one side in the political debate over the Israeli-Palestinian conflict in the form of laws that penalize advocates of the Boycott, Divestment, and Sanctions (BDS) movement. These anti-BDS laws take various forms, but essentially require public employees or government contractors to pledge in writing that they will not support the BDS movement as a condition of their employment or contracting with the government. One hundred such laws have been introduced and they have been adopted in 27 states, by legislation or executive order.

While opinions on solutions to the Israeli-Palestinian conflict, in general, and the BDS movement, in particular, may vary, as they do within ICUJP, there is no question that under settled U.S. law these anti-BDS laws violate the First Amendment. Thirty-seven years ago, in *NAACP v. Claiborne Hardware Co*, 458 U.S. 886 (1982), the Supreme Court specifically upheld the right of the NAACP to advocate for and conduct boycotts of white-owned businesses in order to pressure them to meet demands for racial equality and integration. The Court held that the boycott relied on fundamental constitutional rights including "speech, assembly, association, and petition," which rest "on the highest rung of the hierarchy of First Amendment values." The Court has also held that it is unconstitutional for the government to condition the receipt of a job or government contract or benefit on the relinquishment of constitutional rights. *Pickering v. Board of Education* 391 U.S. 563 (1968).

A 2016 *Harvard Law Review* note concluded that the motive behind anti-BDS laws "could not be more antithetical to the core values of the First Amendment. Fortunately, Supreme Court precedents make clear that attempts to disqualify contractors for support of BDS are foreclosed by the First Amendment."

In September 2016, Governor Jerry Brown signed AB 2844, an anti-BDS law originally entitled "California Combating Boycott, Divestment, and Sanctions of Israel Act." In the

face of objections the bill was watered down but in the final version enacted into law, it provides that anyone making a bid or proposal to enter into a contract with the State of California worth \$100,000 or more must certify under penalty of perjury that they are in compliance with the Unruh Civil Rights Act and Fair Employment and Housing Act (FEHA) and have no "policy" against any "sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel." All persons and companies are already bound by the Unruh Act and FEHA, so the true intent of AB 2844 is readily apparent.

AB 2844 drew widespread opposition from scores of organizations, even including the California Department of Finance. The *Los Angeles Times* ran an editorial entitled "Boycotts of Israel Are a Protected Form of Free Speech" (July 5, 2016). The ACLU of California submitted a five-page detailed analysis calling the bill "an unnecessary and polemical attempt to take sides in an ongoing political debate and embroil the State of California in an inappropriate and costly effort to police, deter, and criminalize political speech." The ACLU also pointed out that "it is not within the province of government to coerce into silence those whose politics are inconsistent with views of state officials."

Recently, on April 25, 2019, in a comprehensive 56-page opinion, a federal judge granted a preliminary injunction restraining the implementation of a Texas anti-BDS law, citing *NAACP v. Claiborne Hardware Co* and other legal authorities, finding the plaintiffs had a likelihood of prevailing on all their constitutional arguments. *Bahia Amawi v. Pflugerville Independent School District, et al*, 1:18-CV-1091-RP. Federal decisions have also sustained challenges to anti-BDS laws in Kansas and Arizona.

Anti-BDS laws violate the Constitution. Instead of allowing free and open debate, these unconstitutional laws are trying to punish one side in the debate over the Israel-Palestinian conflict. They set a dangerous precedent for any political debate in which the government uses its awesome power to coerce a uniformity of opinion and silence dissent. ICUJP calls on elected leaders to oppose new anti-BDS laws and to repeal existing ones. ICUJP will devote its voice and resources to this important task and calls on everyone who values our First Amendment freedoms to join us in this cause.