

United States Senate

WASHINGTON, DC 20510

July 20, 2017

Mr. Faiz Shakir
National Political Director
American Civil Liberties Union
915 15th Street NW
Washington, DC 20005

Dear Director Shakir:

We write in response to your letter regarding the Israel Anti-Boycott Act. Our offices have a long history of defending the civil rights of all Americans, including their right to constitutionally-protected free speech. Because of that history, and because we would not support legislation that infringed on those rights, we welcome the opportunity to correct some fundamental misunderstandings about the bill.

We cannot state this strongly enough: the bill does not “punish U.S. persons based solely on their expressed political beliefs.” Nothing in the bill restricts constitutionally-protected free speech or limits criticism of Israel or its policies. Instead, it is narrowly targeted at commercial activity and is based on current law that has been constitutionally upheld.

In particular, as you know, Congress has the authority to put limits on international commercial conduct. Pursuant to this authority, Congress amended the Export Administration Act (EAA) in 1977 to prohibit U.S. persons from complying with unauthorized foreign boycotts—specifically, the Arab League Boycott of Israel—and authorized penalties against violations. Courts have consistently upheld the Arab League Boycott provisions of the EAA.

The bill makes one small but important change in current law. The EAA currently prohibits U.S. persons from complying with unsanctioned foreign boycotts imposed by foreign *countries*. The new legislation would extend this prohibition to unsanctioned foreign boycotts imposed by *international governmental organizations* such as United Nations agencies or the European Union. For example, if the United Nations Human Rights Council requests information from an American company about its business dealings in Israel or Israeli-controlled territories as part of an effort to compile a blacklist of companies doing business with Israel, the bill would prohibit the company from responding.

Because of the breadth of concerns raised in your letter, it may also be helpful to note conduct that the bill does not address.

The bill does not prevent U.S. companies and individuals from expressing their points of view, speaking in favor of boycott, divestment, or sanctions (BDS) activities, engaging in boycott activity of their own accord, or being critical of Israel. Individuals who “actively avoid purchasing goods and services” because of their own political viewpoint would not be subject to the bill. Similarly, the bill does not regulate civil society organizations who are critical of Israeli policies or prevent them from speaking in favor of BDS. The legislation does not encourage or compel persons to do business with Israel, nor does it punish individuals or companies from refusing to do business with Israel based on their own political beliefs, for “purely pragmatic reasons,” or for no reason stated at all. Any suggestion that this bill creates potential criminal or civil liability for these actions is false.

We also note that you referenced the Export-Import Bank Act in your letter, and implied that the Export-Import Bank Act penalizes U.S. persons for complying with unsanctioned foreign boycotts. This is not correct. The Export-Import Bank changes in our bill apply to the charter of the Export-Import Bank and the policy considerations the Bank must take into account when evaluating certain financial or credit applications.

We believe we have—and have long held—similar goals and beliefs when it comes to First Amendment protections. Consistent with those goals and beliefs, this bill does not limit the rights of American citizens or organizations to express their views on Israeli or American foreign policy. Nor does it introduce any core legal principles that have not already been upheld in court. We welcome a healthy dialogue with you and any other interested parties about the purpose and importance of our legislation, and sincerely hope that this letter has addressed your concerns.

Sincerely,



Benjamin L. Cardin
United States Senator



Rob Portman
United States Senator

cc: Ms. Susan N. Herman, President, American Civil Liberties Union