

The Constitutional Right to Boycott Israel

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America's First Amendment affirms fundamental speech and press freedoms. It prohibits congressional legislation prohibiting the exercise of these rights.

A report by the [Center for Constitutional Rights \(CCR\) and Palestine Legal](#) discussed "The Palestine Exception to Speech: A Movement Under Attack in the US."

It covers "widespread and growing suppression of Palestinian human rights advocacy in the United States" - notably on college campuses against students and teachers.

What's going on has chilling implications for constitutionally guaranteed speech, media and academic freedoms, including an assault on "higher education to help develop critical thinking," CCR and Palestine Legal explained.

Their report documents "event cancellations, baseless legal complaints, administrative disciplinary actions, firings, and false and inflammatory accusations of terrorism and antisemitism - that Israel advocacy organizations, universities, government actors, and other institutions have used against activists."

It includes testimonies of supporters of Palestinian rights, targeted for their activism - in deference to Israel and its US lobby.

According to ACLU Speech, Privacy, and Technology Project attorney Brian Hauss, the right to boycott Israel is increasingly threatened in the US, saying:

"The First Amendment squarely protects the right to boycott. Lately, though, a legislative assault on that right has been spreading through the United States - designed to stamp out constitutionally protected boycotts of Israel."

In *NAACP v. Claiborne Hardware Co.* (1982), a landmark civil rights case, the Supreme Court unanimously upheld the organization's right to boycott white-owned businesses in Mississippi - protesting against segregation and racial injustice, its constitutional right.

The ruling stressed that states may not prohibit peaceful advocacy of a politically-motivated boycott, what First Amendment rights are all about.

In recent years, 26 states enacted legislation violating the Supreme Court's ruling and fundamental First Amendment rights. They aim to delegitimize BDS activism, prohibiting it, falsely equating it to anti-Semitism.

Beginning in April 2015, anti-BDS legislation and/or executive orders exist in Tennessee,

South Carolina, Illinois, Alabama, Colorado, Indiana, Florida, Virginia, Arizona, Georgia, Iowa, New York, New Jersey, California, Pennsylvania, Ohio, Michigan, Texas, Minnesota, Nevada, Kansas, North Carolina, Maryland, Wisconsin, Louisiana, and most recently in Kentucky on November 15, 2018.

Another 13 states are currently considering similar laws, subordinating constitutionally protected rights to Israel's unlawful apartheid persecution of Palestinians.

Without exception, these laws flagrantly violate the Supreme Court's 1982 ruling and fundamental First Amendment rights.

In February 2018, Kansas District Judge Daniel Crabtree struck down a state law, requiring all state contractors "certify that they are not engaged in a boycott of Israel."

The ruling relates to Kansas math teacher Esther Koonz - barred from renewing her teaching contract for her political beliefs.

She supports BDS activism, wanting Israel held accountable for its high crimes against Palestinians.

Kansas House Bill 2409 prohibited state contracts with individuals critical of Israeli actions - a flagrant First Amendment violation.

Judge Crabtree agreed, calling the Kansas law unconstitutional because it "bans (the First Amendment right to support and participate in) political boycotts, which is impermissible."

Texas elementary school speech pathologist Bahia Amawi was fired for refusing to sign a pro-Israeli pledge, her constitutionally protected right.

Texas law prohibits state employees from "boycott(ing) Israel during the term of the(ir) contact(s)," along with refraining from actions "intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israel-controlled territory."

On behalf of Amawi, the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and advocacy organization, sued the state of Texas in federal court, explaining the following:

"Ms. Amawi advocates for boycotts of Israel due to Israel's continuing violations of international law in its treatment of Palestinians."

"Specifically, (she) boycotts products created in Israel in support of the peaceful Palestinian Boycott, Divestment, and Sanctions movement."

She "cannot and will not sign the contract with the 'No Boycott of Israel' provision, which is required by state law. As an advocate for Palestinian rights and justice, she cannot in good faith certify or state that she does not boycott Israel, and will not engage in a boycott of Israel."

She affirmed her constitutional right to boycott Israel, saying

“I couldn’t in good conscience do that.”

“If I did, I would not only be betraying Palestinians suffering under an occupation that I believe is unjust and thus, become complicit in their repression, but I’d also be betraying my fellow Americans by enabling violations of our constitutional rights to free speech and to protest peacefully.”

Her lawsuit states that “(o)n September 17, (she) informed the school district that she would be unable to sign the addendum, citing moral issues.”

“Pflugerville Independent School District informed Ms. Amawi that it would not be able to provide her with payment if she refused to sign the addendum.”

“Ms. Amawi refused to sign and was forced to terminate her contractual relationship with the school district.”

CAIR’s suit is over the state of Texas’ violation of Amawi’s constitutionally protected First Amendment rights, stating:

“Political speech on issues of great national and international importance is central to the purposes of the First Amendment.”

“Speech and advocacy related to the Israel - Palestine conflict is core political speech on a matter of public concern entitled to the highest levels of constitutional protection.”

The landmark 1982 Supreme Court ruling explained above was cited, CAIR saying “(e)conomic boycotts for the purposes of bringing about political change are entrenched in American history, beginning with colonial boycotts on British tea.”

“Later, the Civil Rights Movement relied heavily on boycotts to combat racism and spur societal change. The Supreme Court has recognized that non-violent boycotts intended to advance civil rights constitute ‘form(s) of speech or conduct that (are) ordinarily entitled to protection under the First and Fourteenth Amendments.”

The lawsuit seeks to render anti-BDS legislation unconstitutional, along with reinstating Amawi as a teacher in the Pflugerville Independent School District.

The right to boycott and otherwise criticize Israel may ultimately be ruled on by the Supreme Court.

Despite no ambiguity about First Amendment rights, it’s uncertain how the High Court may rule on this vital issue, given its right-wing majority.

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