

Boycott, Divest, Sanctions Movement

May 21, 2019

Background

The Boycott, Divest, Sanctions (BDS) movement refers to a global campaign promoting various forms of boycott against the State of Israel due to its discriminatory policies against Palestinians. BDS posits that Israel is an apartheid state and calls for an end to the occupation of Arab lands and for Israel to follow international laws.

Several states have enacted laws to combat BDS using state financial powers, and in Congress, several measures have been introduced in the past to penalize individuals and companies from engaging in this boycott. Historically, pro-Israel bills tend to fare well in both chambers; however, with Israeli support becoming polarized, more elected officials are questioning unwavering US relations with Israel and domestic Israeli policies.

Last Congressional session, Senator Ben Cardin (D-MD) and Representative Peter Roskam (R-IL-6) introduced the bicameral Israel Anti-Boycott Act, designed to render it illegal for companies to engage in any boycott against Israel. However, this Act failed to pass due to criticism of its potentially unconstitutional nature as well as its unpopularity by both Congress and the American people.

During the start of the new Congressional session, Senator Marco Rubio (R-FL) introduced Senate Bill 1, called Strengthening America's Security in the Middle East Act of 2019. The Act includes provisions similar to the Israel Anti-Boycott Act and the Combating BDS Act. It would extend an already existing loan guarantee program with Israel through 2023 as well as increase protections for state and local governments that refuse to invest in or establish contracts with companies that boycott Israel. The inclusion of elements of the Combating BDS Act would mean that S. 1 will penalize businesses who participate in BDS activities and all other political boycotts of Israel and Israeli-controlled territories. Currently 26 states have adopted similar laws that penalize companies that choose to boycott Israel; thus, the provisions in S.1 would essentially provide legal cover to those states.

Action

In the past 115th Congressional session, Senator Ben Cardin (D-MD) and Representative Peter Roskam (R-IL-6) introduced the bicameral Israel Anti-Boycott Act. According to the ACLU, this bill seeks to amend the [Export Administration Act of 1979](#) (EAA). That law prohibits “U.S. persons” – a term that refers to both individuals and companies – from taking certain actions to comply with or support a boycott imposed by a foreign country against another country that is friendly to the United States. This bill amends the EAA to prohibit U.S. persons from boycotting

Israel and Israeli businesses. These bills did not pass in either chamber in the 115th session. It declares that Congress:

- Oppose the United Nations Human Rights Council resolution of March 24, 2016, which urges countries to pressure companies to divest from or break contracts with Israel
- Encourage full implementation of the United States-Israel Strategic Partnership Act of 2014 through enhanced, government-wide, coordinated U.S.-Israel scientific and technological cooperation in civilian areas
- Amend the Export Administration Act of 1979 to oppose requests by foreign countries to impose restrictive practices or boycotts against other countries and restrictive trade practices or boycotts fostered or imposed by an international governmental organization, or requests to impose such practices or boycotts, against Israel

In the 116th session, Senator Marco Rubio (R-FL) introduced Senate Bill 1, an overarching comprehensive outline of US strategy in the Middle East. Title 4 of the bill includes a provision that gives states the legal authority to penalize companies that choose not to do business with Israel or with Israeli-owned enterprises, a key component of the BDS movement. Specifically, Title 4:

- Supports state and local governments in adopting and enforcing measures to restrict business with companies that engage in boycott against Israel by increasing legal protections
- Amends the Investment Company Act of 1940 to include the phrase: “knowingly engage in any activity described in section 402(b) of the Combating BDS Act of 2019”

Engage Action Stance

Engage Action fully opposes any legislation, including S.1, that proposes restrictions on boycotts against any foreign countries. Title 4 of S.1 violates the First Amendment, which protects political expression and does not prohibit any form of political boycott, regardless of the target. Engage Action will also take steps to ensure that a House companion bill does not get introduced; should one be introduced, Engage Action will encourage House members to vote against the bill.