



via e-mail

April 18, 2016

Hon. Nathan Deal
Office of the Governor
206 Washington Street
111 State Capitol
Atlanta, GA 30334

Re: First Amendment concerns with S.B. 327

Dear Governor Deal,

As civil and human rights organizations committed to upholding the rights of individuals and entities to express their political beliefs without fear of government retaliation or retribution, we write to convey our strong opposition to S.B. 327. This bill would prohibit the state from contracting with individuals and companies that boycott Israel and “Israeli-controlled territories.” Regardless of one’s views on Israel and Palestine, S.B. 327 targets core political speech and infringes on the freedom to express political beliefs.

Because S.B. 327 is unconstitutional and violates basic American values and democratic principles, we urge you to veto it.

A. S.B. 327 targets core political speech in violation of the First Amendment

S.B. 327 was introduced at a time when Palestinian human rights activists in the United States and elsewhere have embraced boycotts as a way to peacefully pressure Israel to respect the human rights of Palestinians and to influence public opinion in the United States in favor of Palestinian rights. This bill seeks to stifle this human rights movement by targeting individuals and companies that decide for ethical reasons to boycott Israel because of its human rights abuses, and denying such individuals and companies the opportunity to enter into contracts with any state entity.

But government actions and restrictions cannot be based on the desire to punish First Amendment activities that aim to encourage social and political change in a nation’s policies. The Supreme Court has held that “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”¹ The Court has specifically held that boycotts “to bring about political, social and economic change,” like human rights boycotts of Israel, are unquestionably protected under the First Amendment.²

¹*NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 911 (1982) (citing *Carey v. Brown*, [447 U. S. 455](#)).

² *Id.*

It is undisputed that individuals, institutions, and companies may boycott in response to issues of public concern, as some have done historically to challenge racial segregation in the U.S., the apartheid regime in South Africa, and currently, fossil fuel companies. Moves to boycott Israel cannot be differentiated from these and other historical examples of boycotts simply because they may be unpopular with elected representatives today. Such a differentiation would constitute viewpoint discrimination prohibited by the First Amendment.

B. Denial of public contracts, where motivated by a desire to suppress speech, violates the First Amendment

The United States Supreme Court has repeatedly affirmed that government officials' determinations about what views are acceptable cannot infringe on the First Amendment-protected right to freely express political views—however controversial or unpopular.³ Thus, in deciding that the government could not punish public contractors in retaliation for political beliefs, the Supreme Court stated, “[i]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited.”⁴

Yet this is precisely what S.B. 327 would do. By denying public contracts to individuals and businesses because they boycott Israel, S.B. 327 seeks to penalize and inhibit protected speech. “Such interference with constitutional rights,” the Court stated, “is impermissible.”⁵ This bill represents an action by public officials to thwart or penalize speech activities because of the officials' disapproval of the viewpoint expressed, and therefore is exactly the type of action that courts have recognized violates the First Amendment. If passed, it could be subject to constitutional challenge.

C. Penalizing those that boycott Israel will have a chilling effect on protected speech

S.B. 327 also infringes on protected First Amendment activities by subjecting political positions to government approval and penalty. If enacted, this bill will chill the free speech rights of individuals and businesses by effectively dictating that a position supporting human rights is unacceptable. These individuals and businesses may refrain from adopting ethical political stances regarding Israel/Palestine—a matter of public concern—if they know that making business decisions based on human rights concerns could result in the denial of a contract with the state.

In addition, this bill would also discourage grassroots human rights advocacy aimed at pressuring companies to boycott Israel. It would effectively chill advocates' voices by undermining their goal of influencing companies to take ethical political stances, and by stigmatizing their speech. Notably, courts have long recognized that even if a party continues to

³ *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”).

⁴ *O’Hare Truck Service v. City of Northlake*, 518 U.S. 712 (1996).

⁵ *Id.*

4/18/16

Page 3 of 3

exercise its First Amendment rights, it “does not mean that it was not being chilled into engaging in less speech than it otherwise would have.”⁶

D. Conclusion

We are committed to upholding the First Amendment rights of those opposing human rights abuses, and ensuring that they are able to challenge orthodox views on a sensitive political issue like Israel/Palestine without government obstruction. S.B. 327 would punish individuals and companies that use an honored American tactic to effect political change, solely because public officials disagree with that tactic in this context. This bill is constitutionally indefensible, and its passage would invite a legal challenge in order to protect the right to engage in speech activities such as boycotts intended to effect social, political and economic change. Allowing this bill to stand would threaten a crucial vehicle by which individuals and groups can make their collective voices heard.

Sincerely,



Rahul Saksena
Staff Attorney, Palestine Legal



Maria LaHood
Deputy Legal Director, Center for Constitutional Rights

⁶ *Housing Works, Inc. v. City of New York*, 72 F. Supp. 2d 402, 421 (S.D.N.Y. 1999).