

Illinois passes historic anti-BDS bill, as Congress mulls similar moves

By [Eugene Kontorovich](#) May 18 at 5:47 PM

The Illinois House just joined the state's senate in unanimously passing [a bill that would prevent the state's pension fund from investing in companies](#) that boycott Israel. Gov. Bruce Rauner has pledged to sign the historic "anti-BDS" bill.

The significance of the bill cannot be underestimated. European countries have in recent years been whispering dark threats in corporate ears about the "[legal and economic risks](#)" of doing business with Israeli companies. The vagueness of these warnings is a [testament to their legal groundlessness](#). But such scare tactics could not help but affect, at the margin, corporate decision-making. Now, the EU will – if it is honest – have to warn businesses of the legal and economic risks of consciously refusing to do business with such Israeli companies.

More generally, the Illinois bill is part of a broad political revulsion over the long-simmering BDS movement ("Boycott, Divestment, and Sanctions" – the strategy of economic warfare and delegitimization against Israel). While BDS has gotten most of its successes with low-hanging fruit like British academic unions and pop singers, the anti-boycott efforts are getting an enthusiastic reception in real governments, on the state and federal level. And that is because the message of the BDS movement – Israel as a uniquely villainous state – is fundamentally rejected by the vast majority of Americans.

Indeed, a wave of anti-BDS legislation is sweeping the U.S. The most high-profile so far are the [bipartisan amendments](#) to congressional [bills](#) for Trade Promotion Authority. They establish the “discourage[ing]” of boycotts as one of the U.S.’s many goals in trade negotiations with European countries.

The trade amendments do not take any definite action against boycotters. But they clearly establish that in the eyes of America, the BDS is not like the civil rights protests, as its supporters love to claim, but rather more like the anti-Jewish boycotts so common in Europe in the 20th century, and in the Arab world until this day. Indeed, two state legislatures have in recent weeks [passed resolutions saying just that](#).

A more aggressive, and potentially more effective bill is the “[Boycott Our Enemies, Not Israel Act](#)” (H.R.1572) introduced in the House by Rep. Doug Lamborn and seven co-sponsors. It requires government contractors to certify that they are not boycotting Israel. Taking a similar approach, the Illinois bill requires the state’s pension funds to not invest in boycotting companies.

The federal government has long used restrictions on contractors as a way to promote various social values. Thus contractors have been required to abstain from a variety of otherwise legal activities, like not practicing affirmative action. And state pension funds have long engaged in “socially conscious” investing, avoiding investing in companies on the basis of their environmental, employment or labor practices. The Illinois bill simply adds anti-Israel discrimination to the mix.

The United States has long had legislation criminalizing participation in the Arab League boycott of Israel. Courts have upheld the constitutionality of these measures. The U.S. can just as rightly oppose privately propagated boycotts as it could governmentally-sponsored ones. Indeed, the separation is

not ironclad, as many of the NGOs calling for boycotts of Israel are supported by foreign governments.

Nonetheless, it is important to point out that the current round of measures is far less restrictive than earlier boycott laws. They in no way ban participation in, let alone advocacy for, boycotts of Israel.

Yet BDS proponents, now on the defensive, decry these measures as an assault on their rights. Such objections are, like BDS itself, deeply hypocritical.

A major tactic of BDS is to attempt to get state universities and other governmental entities to cut ties with Israel. There is no doubt that BDS proponents are within their constitutional rights to seek governmental action against companies in response to the alleged bad deeds of Israel's government. But this constitutional protection is not one-sided, and cuts both ways. Supporters of Israel can seek government action in response to the alleged bad deeds of the boycotters.

The BDS campaign inevitably reverts to one argument, "What about the boycott of South Africa?" But its validity depends on accepting Israel's conduct as tantamount to apartheid, a view the vast majority of Americans reject. The historic fact of the South Africa boycott surely does not mean that state and federal governments could not, if they choose, legitimately disassociate themselves with, for example, companies that refuse to do business with Islamic countries because of the alleged crimes of Islam.

That boycott proponents claim their actions are motivated by the alleged "crimes" of Israel does not require others to accept their response as fair and reasonable, or even to credit their motives. Indeed, Congress banned participation in the Arab League Boycott, even though the Arab States did to

say they were doing it out of naked malice toward , but rather only in response to Israel's supposed conduct. Policymakers saw through that, and are seeing through the BDS Movement's defenses.



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