Marco Rubio: The Truth About B.D.S. and the Lies About My Bill

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<https://www.nytimes.com/2019/02/05/opinion/marco-rubio-bds-israel.html>

A bipartisan supermajority in the Senate is poised to pass the Combating B.D.S. Act on Tuesday. Yet a few of my colleagues — some on the Senate floor and [one in an Iowa airport](https://twitter.com/jaketapper/status/1090277876103110659) — recently echoed false claims made by anti-Israel activists and others that the bill violates Americans’ First Amendment rights.

That line of argument is not only wrong but also provides cover for supporters of the Boycott, Divestment and Sanctions movement, who embrace an international campaign of discriminatory economic warfare against Israel, a fellow democracy and America’s strongest ally in the Middle East.

Some proponents of B.D.S. claim — and perhaps even believe — that it is a movement meant to put pressure on Israel to end its occupation of the West Bank. But a cursory look at the [public statements](https://www.jewishvirtuallibrary.org/bds-in-their-own-words) of B.D.S. leaders and key advocates show that this is nonsense. The goal of the movement is to eliminate any Jewish state between the Jordan River and the Mediterranean Sea.

In a high-profile case in 2014, the B.D.S. movement [drove the Israeli company SodaStream](https://www.theguardian.com/business/2014/oct/29/sodastream-move-factory-west-bank-israel-slash-forecast) from the West Bank. [Five hundred Palestinian employees](https://www.npr.org/sections/parallels/2016/03/27/471885452/when-500-palestinians-lose-their-jobs-at-sodastream-whos-to-blame) were left jobless by the move. Then, when SodaStream set up shop in the Israeli Negev Desert, B.D.S. proponents urged boycotting the company because they see nowhere within modern Israel that was not once Arab land.

SodaStream is just one of many examples. At a time when anti-Israel boycotts are popping up around the country and internationally, allies of Israel need to find new ways to defend against the evolving threat of economic warfare. That’s why, since 2015, more than 25 states, [including Florida](https://www.sun-sentinel.com/florida-jewish-journal/news/miami-dade/fl-jjdc-legislation-0309-20160307-story.html), have adopted laws or issued executive orders to divest from or prohibit contracts with companies that wage discriminatory economic warfare against Israel.

B.D.S. supporters are challenging these state laws in federal court, arguing essentially that private companies have a fundamental right under the First Amendment to government contracts or to investment by public-sector pensions in their company stock.

The problem is that there are no such rights. While the First Amendment protects the right of individuals to free speech, it does not protect the right of entities to engage in discriminatory conduct. Moreover, state governments have the right to set contracting and investment policies, including policies that exclude companies engaged in discriminatory commercial- or investment-related conduct targeting Israel.

Enter the Combating B.D.S. Act, a bill that Democratic Senator Joe Manchin and I introduced to protect the right of states to do just that. It is now included in the Strengthening America’s Security in the Middle East Act (S. 1) that’s currently on the Senate floor.

We expect it to pass with overwhelming support from both Republicans and Democrats, but given the misleading arguments and amount of misinformation being spread by opponents of the bill, it is worth clarifying what the bill does.

The Combating B.D.S. Act does not infringe on Americans’ First Amendment rights or prohibit their right to engage in boycotts. By design, it focuses on business entities — not individuals — and, consistent with the Supreme Court’s unanimous ruling in Rumsfeld v. Forum for Academic and Institutional Rights (2006), it focuses on conduct, not speech. Indeed, it does not restrict citizens or associations of citizens from engaging in political speech, including against Israel.

Rather, the bill merely clarifies that entities — such as corporations, companies, business associations, partnerships or trusts — have no fundamental right to government contracts and government investment. Similar to federal statutes protecting state governments that choose to divest from companies engaged in business with Sudan and Iran, the bill clarifies that state anti-B.D.S. laws meeting its criteria are not inconsistent with federal policy. By empowering states to counter discriminatory economic warfare targeting Israel, this bill also reinforces American policy insisting that only direct Israeli-Palestinian negotiations can resolve that conflict.

Just as United States court rulings have repeatedly affirmed that states have discretion over whether to invest or contract with a company undertaking actions at variance with their laws or policies, companies remain free to cow to radical anti-Israel interests and engage in discriminatory economic warfare against one of America’s closest allies. Indeed, a federal court in Arkansas last month upheld the constitutionality of that state’s anti-B.D.S. law.

Yet it’s disturbing to see the bill’s opponents challenge anti-discrimination principles to create an open field for B.D.S. “Anti-discrimination restrictions on government contractors are commonplace and a normal requirement for government funding” Eugene Kontorovich, a law professor at George Mason University, notes. “Of course, some who oppose discrimination against gays may think boycotting Israel is more defensible. But First Amendment protection or lack thereof does not turn on the popularity or content of the relevant views.”

The pro-Israel Combating B.D.S. Act enjoyed strong bipartisan support last year; Senate co-sponsors included the majority leader, Mitch McConnell, and the minority leader, Chuck Schumer; the current Foreign Relations Committee chairman, James Risch, (Republican of Idaho); the committee’s ranking member, Bob Menendez, (Democrat of New Jersey); the current Finance Committee chairman, Charles Grassley, Republican of Iowa; and Ron Wyden, Democrat of Oregon. The Committee on Banking, Housing and Urban Affairs under Mike Crapo, Republican of Idaho, discharged the bill and tried to fast-track it for passage last December.

Despite the growing influence of anti-Israel voices on the left, which accounts for a growing share of the Democratic political base, the Senate is poised to pass the Combating B.D.S. Act in a bipartisan supermajority vote. I urge Speaker Nancy Pelosi to quickly pass the measure in the House of Representatives. Let’s stand with our ally in its fight against the B.D.S. movement’s discriminatory economic warfare.