

[REDACTED]

September 1, 2015

Dear [REDACTED]:

The Lawfare Project and StandWithUs are disturbed to learn of [REDACTED] recent adoption of a resolution endorsing the Boycott, Divestment and Sanctions (BDS) movement and its inherently discriminatory goals and activities. We write to inform you that, in furthering and supporting the goals of the boycott of Israel sponsored by the Arab League, you are now operating in direct contravention of United States policy and dangerously close to violating well-settled U.S. federal and state law.

The boycott and divestment strategy to bankrupt Israel and Israeli businesses was conceived and initially implemented by the Arab League prior to the founding of Israel in 1948. Many Arab League countries have continued these commercially discriminatory practices with the same stated objective, and the corporate “blacklist” has grown to include a vast and diverse variety of international businesses targeted solely because of their national origin.

The modern BDS movement is a vengeful derivative of the Arab League, and exists as a nonviolent means of furthering the Islamist movement’s goal of the destruction of Israel. Further, the BDS movement and its proponents operate to undermine our liberal democratic values of freedom of speech and association. Ironically, one of the first institutions the Islamist movement would dismantle would be the labor union, through which we are able to join collectively to peacefully and democratically advance shared goals.

According to your website, the [REDACTED] will “develop a plan of action, based on policies adopted at the National Convention” to “deliver [your] demands to politicians at all levels of government.” It is brazenly hypocritical that [REDACTED] would spend the time, resources and effort to lobby elected officials to support the unapologetically discriminatory policies of the BDS movement. Discrimination against persons, products and corporations based on national origin is not only illegal in this country, but it is a position that is antithetical to the purpose and goals of unionization.

While [REDACTED] resolution claims to “support the Palestinian people in their right to self-determination,” the BDS movement is only pro-Palestinian to the extent that it is anti-Israel. BDS groups are not engaged in humanitarian assistance to the Palestinian people. In fact, to the contrary: when BDS efforts have successfully resulted in closures of Israeli companies operating in the disputed territories, it is primarily the Palestinian employees of these companies who are harmed (i.e., by losing their jobs). The Palestinian economy is not able to provide these unemployed individuals with comparable opportunities. Palestinian human rights activist Bassam Eid says that 92,000 West Bank Arabs work in Israel every day, and that “the only good jobs are with Israeli companies, and the BDS movement is doing its best to take those jobs away from us.” It represents the height of hypocrisy for a *union* to advocate measures that are so manifestly harmful to workers, especially those it is claiming to represent.

The BDS movement is supported by the Palestinian Authority, which has united with Hamas, a designated terror organization that has displayed callous disregard for the dignity of workers. In constructing its vast network of terror tunnels into Israel, Hamas enlisted the support of child labor. According to a report published by the Institute for Palestine Studies, Hamas used child labor for their tunnels because “much as in Victorian coal mines, they are prized for their nimble bodies.” Hamas

officials stated that at least 160 people were killed in constructing the tunnels—the majority of them children. It is simply appalling that a union would ally itself with an organization that systematically violates the dignity and risks the lives of workers.

Further, the BDS movement is fundamentally anti-Semitic and its goals are not only incompatible with a two state solution, but desirous of a one state solution—without Jews. Those that claim that the BDS movement is not anti-Semitic are ignoring reality. One can simply look to the recent controversy in Spain, where BDS advocates proudly targeted non-Israeli Jewish singer Matisyahu, attempting to have him expelled from a scheduled music festival. Upon cancelling Matisyahu's performance, the festival faced intense condemnation from Spanish leaders and the entire international community before publicly apologizing and re-inviting Matisyahu to perform. We urge ██████ not to make the same mistake, but instead to reject the racism and bigotry underlying the BDS movement.

President Carter acknowledged the anti-Semitic nature of the boycott of Israel when he signed the Export Administration Act (EAA) into law, saying that its purpose was to “end the divisive effects on American life of foreign boycotts aimed at Jewish members of [American] society.” The EAA and the Ribicoff Amendment to the Tax Reform Act of 1976 are the primary federal anti-boycott laws that prohibit and penalize discriminatory commercial conduct in the United States. According to the Office of Antiboycott Compliance, a division of the U.S. Department of Commerce, the EAA was adopted to prohibit U.S. persons from taking actions to further, endorse, or support foreign governments' boycotts that the U.S. does not sanction. That includes the boycott of Israel as advanced by the Arab League, and any actions taken on its behalf.

The BDS movement and the Arab League boycott are synonymous. They are the exact same foreign boycott advanced against a country friendly to the United States. The BDS movement effectuates the Arab League's goal by influencing other individuals, nations and private entities—such as ██████—to act “to comply with, further, or support an unsanctioned foreign boycott” in violation of the EAA, and therefore commercial action taken consistent with this goal will lead to liability under the EAA's provisions. Current penalties for the type of conduct ██████ has endorsed include fines of up to \$250,000 per violation, or twice the value of the transaction for administrative violations, whichever is greater. Criminal (knowing and willful) violations have penalties of up to \$1 million and 20 years' imprisonment per violation. Commercially discriminatory conduct as advanced by BDS and now endorsed by ██████ is also prohibited and severely penalized under other federal laws including the Ribicoff Amendment to the Tax Reform Act of 1976 and the Sherman Antitrust Act.

BDS activities are not only illegal on the federal level. The Indiana, New York and Tennessee legislatures have recently passed unanimous resolutions condemning the BDS movement and exposing it for the anti-Semitic, anti-peace initiative it truly and openly is. State laws have been enacted in New York, California, Illinois and South Carolina outlawing BDS activity, and anti-BDS bills have been introduced in Pennsylvania, New York, New Jersey and Florida. Some states have created policy boards tasked with identifying corporations who sympathize with, advocate for, or otherwise advance BDS goals; recognized corporations in these states will be banned from state contracts and/or state investment in public pension funds. Other states have anti-discrimination statutes, which include private rights of action for individuals and/or corporations that face commercial discrimination based on ethnicity and/or national origin. In the coming months, forty U.S. state legislatures will review anti-BDS legislation, and the U.S. Congress will consider federal bills in both the commercial and anti-discrimination contexts. So while ██████ is actively lobbying *on behalf of* this repugnant movement, the national trend in the United States is toward condemning, and often outlawing, BDS activity. The expectation is that discriminatory commercial conduct, as advanced by BDS proponents and now by ██████, will soon be prohibited and

penalized in every U.S. jurisdiction.

██████████ resolution says that its goal is to pressure the Israelis to “end their apartheid over the Palestinians.” But even a cursory look at the facts will show the alarming frivolousness of this analogy. Israeli Arabs—nearly 20% of the Israeli population—are full citizens with full rights. As South African journalist Benjamin Pogrund explains, Israeli Arabs “have the vote and Israeli Arab MPs sit in parliament. An Arab judge sits on the country’s highest court; an Arab is chief surgeon at a leading hospital; an Arab commands a brigade of the Israeli army; others head university departments. Arab and Jewish babies are born in the same delivery rooms, attended by the same doctors and nurses, and mothers recover in adjoining beds. Jews and Arabs travel on the same trains, taxis and – yes – buses. Universities, theatres, cinemas, beaches and restaurants are open to all.”

This is why those who were exposed to *real* South African apartheid, such as parliamentarian Kenneth Meshoe, say that calling Israel an apartheid state is “inaccurate,” “malicious” “slander” and that “[t]he BDS movement is a real pain...to us in South Africa...it is not a democratic movement; they are a movement of intimidation, a movement that performs hatred.” South African president F.W. de Klerk, who helped end apartheid with his successor, Nelson Mandela, opposes the boycott of Israel, saying that only dialogue, and not economic discrimination, will bring about any change in Israeli-Palestinian relations. And South African journalist and 26-year apartheid reporter Benjamin Pogrund says that using the term “apartheid” to describe Israel is “deeply offensive, insulting to the people of South Africa who suffered under it, and is detached from reality.” According to Pogrund, BDS “campaigners want Israel declared an apartheid state so it becomes a pariah, open to the world’s severest sanctions. Many want...an end to Israel itself.”

██████████ is free to criticize Israeli policies. However, targeting or discriminating against a person or company because of their ethnicity or national origin is entirely unacceptable. You would not boycott your local Chinese restaurant to protest Chinese policy, nor would you refuse to purchase from an African American retailer to declare condemnation of the government of Sudan. You would certainly never adopt a union-wide policy of refusing to do business with these people or businesses. And yet, the BDS movement targets people and corporations because of their Jewish ethnicity and/or Israeli national origin—as well as secondary and even tertiary businesses that engage commercially with Israelis—ostensibly to protest the Israeli government. Tellingly, the BDS movement singles out the Jewish state, and only the Jewish state, in its so-called human rights advocacy. This is racism, pure and simple.

In joining the nefarious groups who call to boycott Israeli persons and corporations, and anyone doing business with them, ██████████ is proceeding on the wrong side of history. Attempting to advance the illegal, immoral and often violent message of the BDS movement is unproductive and antithetical to the very existence of ██████████ and any other labor association.

With regards,



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