

General Convention of The Episcopal Church 2022 Archives' Research Report

Resolution No.: 2022-C013
Title: Freedom of Speech and the Right to Boycott
Proposer: Chicago
Topic: Human Rights, Middle East

Directly Related: (Attached)

2018-D028 On the Topic of Opposing Anti-Boycott Legislation (Rejected)
1991-D122 Distinguish Between Criticism of Israeli Policy and Anti-Jewish Prejudice
1988-B052 Endorse the Boycott Against International Oil Companies in South Africa

Indirectly Related: (Available in the [Acts of Convention](#) database, searchable by resolution number)

2015-D016 On the Topic of Investment in Israeli-Occupied Palestine (Rejected)

In preparing this report, the Archives researched the resolutions in the Acts of Convention database for the period 1973 through 2018, selecting “direct” resolutions that have a substantive bearing on the proposed legislation. The “direct” resolutions are attached and “indirect” resolutions are available in the Acts of Convention database. Committee members who require other research assistance should contact the Archives through the [Research Request Form](#) or call 800-525-9329.

C013 - Freedom of Speech and the Right to Boycott

Final Status: Not Yet Finalized

Proposed by: Chicago

Requests New Interim Body: No

Amends C&C or Rules of Order: No

Has Budget Implications: No

Cost:

HiA: HB

Legislative Committee Currently Assigned: 07 - Social Justice & International Policy

Completion Status: Incomplete

Latest House Action: N/A

Supporting Documents: No

Resolution Text

Resolved, the House of _____ concurring,

That the 80th General Convention of The Episcopal Church call on the President of the United States and the U.S. Congress to oppose legislation that penalizes or criminalizes support for nonviolent boycotts on behalf of Palestinian human rights as an infringement of First Amendment rights.

Explanation

Our Diocesan Convention in November 2019 unanimously adopted a similar resolution, G-182. This time Convention is being asked to call on the next General Convention to consider a resolution on Freedom of Speech and the Right to Boycott.

First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Constitutional norms affirming separation of church and state preclude our involvement in partisan politics, yet as Christians we are called to witness on behalf of the most vulnerable. The First Amendment guarantees the free exercise of religion, freedom to express our views and act in accord with our conscience, and the right to petition government about perceived injustices. Anti-boycott measures threaten these freedoms. The infringement of one liberty facilitates an assault on others.

Boycotts are a form of expression protected by the First Amendment as Supreme Court decisions have declared. In *NAACP v. Claiborne Hardware* (1982) the Court ruled that activity to protest injustice is protected speech. In *O'Hare Truck Services v. City of Northlake* (1995) the Court also ruled that government is constitutionally prohibited from making political beliefs a condition for receiving public contracts. Boycotts as nonviolent political action to oppose injustice have an honorable history in the United States, including the pre-Revolutionary boycott of tea, the 1955-56 Montgomery Bus Boycott, the boycott of South African apartheid, and the recent boycott of North Carolina opposing its anti-LGBT legislation. The Episcopal Church USA supported divestment and sanctioning of South African apartheid. (See 1985-D073, 1988-B050 and B052, 1991 AI 54 at <https://www.episcopalarchives.org/e-archives/acts/>) Anti-boycott measures seek to prevent Americans from acting nonviolently in accord with their beliefs.

The Call for Boycott, Divestment, and Sanctions issued by Palestinian civil society in 2005 launched a nonviolent movement that proposes economic measures to pressure Israel to comply with international law, respect human rights, and end the occupation of Palestinian lands deemed illegal by the vast majority of nations worldwide. (<https://bdsmovement.net/call>) The U.S. has signed the Geneva Conventions defining the laws of occupation and the Universal Declaration of Human Rights. Anti-BDS legislation sets up a conflict between U.S. and international law.

In response to the growing movement for Palestinian human rights and self-determination, over 100 measures targeting supporters of Palestinian rights have been introduced in state and local legislatures and in the U.S. Congress. To date thirty states have enacted anti-boycott measures, including five governors' executive orders. In May 2015 the 99th General Assembly of the State of Illinois passed SB 1761, which prevents Illinois pension funds from investing in foreign firms that participate in boycotts of Israel and punishes international companies that boycott goods from Israeli settlements in occupied territories. (<https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1761&GAID=13&DocTypeID=SB&SessionID=88&GA=99/7>).

At the federal level the most chilling development has been the December 2019 Executive Order 13899 titled Combating Anti-Semitism. (<https://www.whitehouse.gov/presidential-actions/executive-order-combating-anti-semitism/>) This order requires that Government agencies, including the Department of Education with its significant authority over educational institutions, in applying Title VI of the Civil Rights Act use a distorted definition of antisemitism that essentially conflates it with criticism of Israel. Since issuance the Order has been used in multiple cases as a tool to justify federal investigations targeting campus advocacy for Palestinian rights. Using this same definition of antisemitism, some local jurisdictions have proposed or enacted legislation that would criminalize speech critical of Israel by treating it as evidence of a hate crime. These laws radically increase the legal consequences of criticizing Israeli treatment of Palestinians.

Meanwhile, H.R. 5595, (<https://www.congress.gov/bill/116th-congress/house-bill/5595>) the latest version of the Israel Anti-Boycott Act, was introduced in January 2020 and has still not passed, largely because of recognition that it flouts First Amendment protections. Prison terms have been removed as sanctions, but civil fines of up to \$300,000 and criminal sanctions of up to \$1 million are still prescribed for entities that support BDS.

Opponents of BDS contend that it is antisemitic, whereas a reading of the Call demonstrates that it is about ending the denial of Palestinian rights. The accusation of antisemitism is used to censor debate. It conflates criticism of state policies with discrimination against a people and deflects attention from genuine concerns with rising antisemitism fueled by right-wing extremism. In 1991 with Resolution D122, the Episcopal Church affirmed that legitimate criticism of Israeli government policies and actions is not antisemitic. (<https://www.episcopalarchives.org/e-archives/acts/>)

On April 2, 2014 Archbishop Desmond Tutu issued a statement in support of BDS part of which read:

In South Africa, we could not have achieved our democracy without the help of people around the world, who through the use of non-violent means, such as boycotts and divestment, encouraged their governments and other corporate actors to reverse decades long support for the Apartheid regime. My conscience compels me to stand with the Palestinians as they seek to use the same tactic of non-violence to further their efforts to end the oppression associated with the Israeli Occupation.

(<https://peaceandjustice.org/?s=statement+from+archbishop+desmond+tutu>)

Along with several other organizations committed to defending civil liberties, the American Civil Liberties Union has actively opposed anti-BDS legislation.

(<https://www.aclu.org/blog/free-speech/congress-laws-suppressing-boycotts-israel-are-unconstitutional-sincerely-three>)

In January 2018 the ACLU won an early victory in a lawsuit affirming that a Kansas law requiring a public school educator to certify that she would not boycott Israel was a violation of her First Amendment rights. Similarly, in September 2018 a federal court blocked an Arizona law that required state contractors to certify that they would not boycott Israel. Adjudication continues and may require a Supreme Court ruling.

Whatever our stance on a particular boycott, we must defend the First Amendment right to speak and to act nonviolently in accord with our conscience.

Adoption of this resolution is not expected to require expenditures that would have an impact on the Episcopal Church budget.



Resolution Number: 2018-D028
Title: On the Topic of Opposing Anti-Boycott Legislation
Legislative Action Taken: Rejected
Text of Resolution:

Resolved, the House of Bishops concurring, That the 79th General Convention of The Episcopal Church urge the President and the Congress of the United States to reject legislation that would penalize companies and organizations for their participation in nonviolent boycotts on behalf of Palestinian human rights as such legislation, at both federal and state levels, would be an infringement on First Amendment rights, based on the Supreme Court's consistent definition of boycotts as protected speech; and be it further

Resolved, That this Convention instruct the Office of Government Relations in Washington to inform legislators of our Church's opposition to the anti-boycott legislation pending in Congress as an infringement on the First Amendment right of free speech, and should such legislation become law, now or in the future, the Convention directs the Executive Council or the Presiding Bishop to file an amicus brief in support of court challenges to the law.



Resolution Number: 1991-D122

Title: Distinguish Between Criticism of Israeli Policy and Anti-Jewish Prejudice

Legislative Action Taken: Concurred

Final Text:

Resolved, That the 70th General Convention of the Episcopal Church recognize that a distinction exists between the propriety of legitimate criticism of Israeli governmental policy and action and the impropriety of anti-Jewish prejudice; and be it further

Resolved, That the 70th General Convention of the Episcopal Church deplore all expressions of anti-Jewish prejudice (sometimes referred to by the imprecise word "anti-Semitism"), in whatever form on whatever occasion, and urge its total elimination from the deliberations and affairs of the Episcopal Church, its individual members, its various units.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Phoenix, 1991* (New York: General Convention, 1992), p. 773.



Resolution Number: 1988-B052
Title: Endorse the Boycott Against International Oil Companies in South Africa
Legislative Action Taken: Concurred As Amended
Final Text:

Resolved, That, in response to the urgent request of Archbishop Tutu, the House of Deputies concurring, that the 69th General Convention adopt as its own resolution, with amendment, the resolution adopted by Executive Council, May 19, 1988:

Whereas, the Apartheid government of South Africa continues its brutal oppression as demonstrated in its recent action against 18 political organizations which and individuals who have been effectively banned; and

Whereas, Archbishop Desmond Tutu has called on foreign countries to enact and enforce comprehensive economic and diplomatic sanctions against South Africa; and

Whereas, Shell South Africa is the largest of three oil companies involved in South Africa; and

Whereas, South Africa does not produce oil of its own; and Whereas, Shell provides oil to South Africa that fuels the war in Namibia and assists the police and military in maintaining Apartheid; and

Whereas, the Episcopal Church has divested itself of stock of companies doing business in South Africa, including Shell Oil Company; therefore be it

Resolved, That the Episcopal Church join with those churches and others who have endorsed the boycott against Royal Dutch Shell; and be it further

Resolved, That this action be communicated to the widest membership in the Episcopal Church, encouraging the membership to participate in the boycott; and be it further

Resolved, That we call for the expanding of this boycott to include all international oil companies doing business in South Africa: Mobil, Chevron, Texaco, British Petroleum and Total.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Detroit, 1988* (New York: General Convention, 1989), p. 688.