May 14, 2015

Honorable Michael Richard Pence, Governor
Office of the Governor
Statehouse
Indianapolis, Indiana 46204-2797
Hand Delivered

Re SR 74: Peaceful advocacy and activism to achieve equality and justice for Palestinians is not anti-Semitism

We write in support of a broad coalition of civil and human rights organizations that is petitioning you to decline to sign Senate Resolution 74, which expresses "opposition to the anti-Jewish and anti-Israel Boycott, Divestment and Sanctions campaign (BDS)." A copy of the coalition petition is attached.

Our opposition to SR 74 arises from our firm commitment to constitutional principles, beginning with respect for free speech rights protected by the First Amendment. SR 74 is an affront to these rights. While ostensibly opposing anti-Semitism, it erroneously conflates criticism of Israeli policies and practices toward Palestinians with hatred of Jewish people. In its intolerance for political advocacy that it clearly misunderstands, the Resolution threatens to chill protected speech by intimidating people who wish to criticize Israel's behavior toward Palestinians.

1. BDS as a tactic has wide support from diverse groups.

Accusations that BDS campaigns are "anti-Semitic" are offensive to the diverse range of individuals and groups, including those that self-identify as Jewish, who support them in Indiana and elsewhere in ever-increasing numbers.

U.S. Jewish organizations that endorse BDS as a tactic to effect change include the national organization Jewish Voice for Peace, a signatory to this letter, whose Indiana chapter is a formal endorser of the attached petition; American Jews for a Just Peace and the International Jewish Anti-Zionist Network. The national Open Hillel movement seeks "a vibrant, pluralistic Jewish community on campus," and believes that "this pluralism should be extended to the subject of Israel, and that no Jewish group should be excluded from the community for its political views."[1] SR 74 reflects outdated assumptions about the political views of the U.S. Jewish community, perpetuated by organizations that purport to represent it, such as AIPAC. A November 4, 2014, national J Street poll reported that 25 percent of the U.S. Jewish community supports a boycott of West Bank settlement products.[2]

The Presbyterian Church (USA) and the United Methodist Church's Pension

[1] http://www.openhillel.org/about.php
[2] http://jstreet.org/blog/post/2014-electionnight-poll-results-_1

Board have each endorsed divestment from specified companies profiting from Israel's human rights abuses against Palestinians. Archbishop *Emeritus* Desmond Tutu has repeatedly and eloquently endorsed BDS. Human rights advocates of all backgrounds endorse BDS as a primary nonviolent tool to express collective opinions and effect change on important issues, from South African apartheid to our own civil rights movement and the consumer grape boycott of the recent past.

2. SR 74 tramples on First Amendment rights to free expression.

The right to advocate and act within the bounds of the law to achieve human rights goals is strongly protected by the First Amendment. No advocacy is more strongly protected by the First Amendment than speech on public issues. *Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (2011). Such speech "occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection." *Connick v. Myers,* 461 U.S. 138, 145 (1983). Of the various ways in which government actors have attempted to suppress political speech, official suppression of a particular viewpoint is the clearest violation of free speech rights. *Texas* v. *Johnson,* 491 U. S. 397, 414 (1989) ("Viewpoint discrimination is censorship in its purest form."); *see R.A.V. v. St. Paul,* 505 U.S. 377, 391 (1992). The Supreme Court has specifically ruled that boycotts conducted to achieve human rights goals are fully protected by the First Amendment. *NAACP v. Claiborne Hardware,* 458 U. S. 886 (1982).

These First Amendment principles have been reaffirmed recently in both federal court litigation and federal agency determinations on complaints that challenged campus advocacy for Palestinian rights, including BDS campaigns. Every legal challenge to such activism has been rejected on First Amendment grounds. *Felber v. Yudof,* 851 F. Supp.2d 1182 (N.D. Cal. 2011) (University of California at Berkeley); OCR Case Nos. 09-12-2259 (UC Berkeley), 09-09-2145 (UC Santa Cruz); 09-07-2205 (UC Irvine);[3] *Rutgers University,* OCR Case # 02-11-2157.[4]

Government interference in speech activities "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace."[5] This Resolution is just such an inappropriate intrusion of legislators into political discourse with which they disagree. It sends the clear message that the Indiana Legislature disfavors the political viewpoints of supporters of boycotts. The First Amendment protects minority and controversial views, not just popular ones.

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[3] DOE's determination letters are posted here: UC Berkeley (http://bit.ly/doeucb); UC Santa Cruz (http://bit.ly/doeucsc); UC Irvine (http://bit.ly/doeucirvine).

[4] The *Rutgers* DOE decision is posted online: https://www.documentcloud.org/documents/1300803-ocr-decision-on-title-vi-complaint-7-31-14.html

[5] *R.A.V. v. St. Paul*, *supra,* at 387 (internal quotations and citations removed); *see also 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.").

3. BDS Is Motivated by Well-Documented Human Rights Issues, Not Anti-Semitism.

The Resolution also adopts a false analysis. Activism to achieve human rights goals is not an expression of hatred, but support for equality and fairness. No country is above reproach or lawful activism against its policies and practices or to achieve human and legal rights. Criticism of a country's violations of the rights of a group under its control is not hate speech against the majority group. It is criticism of official state policies and practices. Nonviolent BDS campaigns are dedicated solely to achieving the human and legal rights of the Palestinian people, who have been denied their rights to self-determination and have lived under an extraordinarily harsh and deadly military occupation for 48 years and as second-class citizens of Israel for 67 years.

In 2005, Palestinian civil society organizations made a united appeal to the rest of the world to engage in nonviolent collective pressure against Israel in the tradition of Mahatma Gandhi, Martin Luther King, the South Africa anti-Apartheid BDS movement, the U.S. civil rights movement, and the U.S. grape boycott, until three articulated goals are achieved: (1) an end to Israel's military occupation, an occupation of unprecedented length in modern history; (2) equal rights for the Palestinian citizens of Israel; and (3) recognition of the Palestinian "right of return" -- the legal and human right affirmed by the United Nations in General Assembly Resolution 194, entitling Palestinians, as all other occupied peoples, to return to their homes.[6]

In response to this call, hundreds, perhaps thousands of independent campaigns have been initiated around the world, including the U.S. These campaigns are not directed against the Jewish people, most of whom do not live in Israel. It makes no more sense to call these BDS campaigns a racist global conspiracy against the Jewish people than it does to call the South African anti-apartheid movement or the U.S. civil rights movement racist campaigns against white people. These were and are all struggles for equality, each targeting official state repression.

4. SR 74 aims to stigmatize and suppress advocacy for Palestinian rights.

If SR 74 becomes law, it will become a tool for the suppression of thoughtful criticism and idealistic human rights activism. Indeed, SR 74 seems to have no other purpose than to stigmatize and chill the constitutionally-protected right to engage in peaceful activism to achieve Palestinian self-determination and human rights.

SR 74 reflects the influence of Israel advocacy organizations that have reportedly spent hundreds of millions of dollars to suppress the growing criticism of Israeli human rights abuses. These efforts have involved legal threats and complaints, smear campaigns against student activists and academics, pressure on university administrators and government officials to censor Palestine advocacy, subsidized travel to Israel for student leaders, among other things.[7]

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[6] *See also* Security Council Resolution 242.

[7] *See The Business of Backlash* (International Jewish Anti-Zionist Network 2015); http://www.ijan.org/resources/business-of-backlash/

Historically, "anti-Semitism" has referred to hatred of Jewish persons based on their identity as Jews. These conservative Israel advocacy groups are attempting to radically redefine anti-Semitism to include BDS advocacy and other criticism of Israeli policies. Their goal does not arise from concern for Jewish people; it is to defend Israel's expansionist policies from increasing criticism, which they claim "delegitimizes" Israel.[8] This nationalist motive has no legitimate place in the definition of "anti-Semitism." Nor does BDS advocacy "delegitimize" Israel. It is Israel's conduct that is at issue, and honesty demands it be addressed directly, not by a campaign to suppress the criticism. These advocacy groups are trying to shoot the messengers, instead of addressing the issues they raise.

These efforts to stigmatize and suppress a particular viewpoint have been widespread. In 2014, Palestine Solidarity Legal Support (PSLS) documented over 240 incidents of suppression of speech activities and requests for legal advice from advocates for Palestinian rights, nearly 75 percent of them on college campuses. These ranged from disciplinary actions against students for peaceful speech activities to smear campaigns, death threats and anti-Arab and anti-Muslim slurs against activists who voiced their views. In the *first four months* of 2015, PSLS responded to 120 requests for legal assistance and reports of suppression of speech.

SR 74 is a deeply flawed legislative statement that will inevitably have a coercive and chilling effect on peaceful and protected political advocacy. We urge you to demonstrate your commitment to free speech and the rule of law by declining to sign it. To lead the way in dispelling the chill that this misguided resolution has already likely caused to the targeted advocacy, we also urge you to condemn it publicly as an assault upon free speech rights.

Respectfully yours,

Azadeh N. Shahshahani, for the National Lawyers Guild

Ramah Kudaimi, for the U.S. Campaign to End the Israeli Occupation

Dima Khalidi, for Palestine Solidarity Legal Support

Maria LaHood, for the Center for Constitutional Rights

Bill V. Mullen, for the United States Academic and Cultural Boycott of Israel

Emma Rubin, for the International Jewish Anti-Zionist Network

Rebecca Vilkomerson, for Jewish Voice for Peace

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[8] *See e.g.,* israelactionnetwork.org/aboutus.