

Senator Chris Murphy
136 Hart Senate Office Bldg.
Washington, D.C. 20510

RE: Senate Bill 170 “Combating BDS ACT of 2017”

Dear Senator Murphy,

We are disappointed to see that Senator Blumenthal signed on with Senator Marco Rubio, Senator Ted Cruz and 14 other Senators as a co-sponsor of the above referenced bill. We are asking that you oppose this legislation.

This profoundly flawed legislation supports initiatives that infringe upon our First Amendment right of dissent. As Americans and supporters of BDS we have every right to oppose the ongoing human rights abuses that Israeli policies inflict upon the Palestinian people, and to do so without state action imposed to discriminate against such dissent.

BDS is a nonviolent peace and justice movement that seeks freedom, justice and equality for the people of Israel and Palestine. It is a response to a 2005 call from Palestinian civil society for boycotts to be imposed against Israel until it complies with three demands concerning its ongoing treatment of the Palestinian people. The BDS movement specifically calls for the following actions by Israel:

- 1. Ending its occupation and colonization of all Arab lands and dismantling the Wall;*
- 2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality;*
- 3. Respecting, protecting and promoting the rights of Palestine refugees to return to their homes and properties as stipulated in UN Resolution 194.*

The rights to boycott and hold dissenting views are sacred threads of our democratic fabric that have served to protect the human family. The civil rights boycotts in the South were necessary strategic pressures in our nation’s ongoing struggle to overcome the discriminatory vestiges of slavery. Likewise, boycott, divestment, and sanctions strategies have been heralded as tools to

stop exploitation of farmworkers, end Shell Oil's violations in Nigeria, protest Nestle's marketing of infant formula in impoverished communities, and assist the international effort to topple racist South African Apartheid. The First Amendment of the United States Constitution gives citizens the right to criticize the policies of our government, as well the policies of foreign governments.

The U.S. Constitution forbids the use of state power to chill political speech. The BDS campaign is aimed at pressuring Israel to change its policies. The U.S. Supreme Court has ruled that boycotts to "bring about political, social and economic change" are a form of political speech protected by the First Amendment.¹ The First Amendment protects BDS speech and conduct. In addition, the Fourteenth Amendment prohibits any state from abridging freedom of speech or of the press.²

Legislation that denies BDS proponents state contracts, funding, or investments simply because of the content of their democratic advocacy contravenes First Amendment protections.³ There is a significant First Amendment distinction between government speaking, e.g., deciding not to invest in corporations profiting from apartheid, which is permissible, and government restricting citizens' speech merely because of the content. In the first instance, the government is simply stating its views and exercising a permissible form of marketplace participation. In the second instance, it is using state power, e.g., the threat of withdrawing funding, in order to pressure citizens to stifle or alter their message. As noted by Chief Justice Roberts in his 2013 majority opinion: "*The relevant distinction that has emerged from our cases is between conditions that define the limits of the government spending program – those that specify the activities Congress wants to subsidize – and conditions that seek to leverage funding to regulate speech outside the contours of the program itself.*"⁴ Senate Bill 170, if enacted only serves to support state initiatives aimed at stifling BDS in contravention of the First Amendment.

¹ See, *NAACP v. Clairborne Hardware Co.*, 485 U.S. 886, 911-912 (1982)

² United States Constitution, Amendments I and XIV

³ *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 545 (1983), citing *Perry v. Sinderman*, 408 U.S. 593, 597 (1958); see also, *Federal Communications Commission v. League of Women Voters*, 468 U.S. 364 (1984); *Legal Services Corporation v. Velazquez*, 531 U.S. 533 (2001); *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47, 59 (2006).

⁴ *U.S. Agency for International Development et al v. Alliance for Open Society International Inc. et al*, U.S. Supreme Court, 133 S. Ct. 2321, 2328 (2013)

We, and many of your constituents believe that Israel and its U.S.-based support lobby have constructed walls of despair rather than bridges of hope. They have paved a path of obstruction and destruction that has rendered the “two-state solution” (to which it pays lip service) obsolete by establishing Jewish-only settlements within the remaining 22% of historical Palestine territory, including East Jerusalem. This territory was internationally acknowledged as the future Palestinian State, but what remains are diminished Bantustan cantons rather than a contiguous landmass for the establishment of a state. Israel would never tolerate such treatment of the Jewish people as it has imposed on the Palestinian people. The lobby’s uncritical support of Israel has only cemented the conflict, emboldened the Israeli right wing, and created a state-imposed apartheid-like separation of peoples. A just peace will never emerge from such conditions.

Secretary of State John Kerry observed in the waning hours of the Obama presidency that Israel’s illegal settlements impede peace.⁵ Brent Scowcroft, former National Security Advisor to President Gerald Ford, and Thomas R. Pickering, former Undersecretary of State and Ambassador to the U.N. and Israel, recently wrote in *The Washington Post*: “The permanent disenfranchisement of millions of people . . . keeping the Palestinians separate and unequal . . . does not conform with American values.”⁶ But U.S. dollars continue to pour to Israel even as it disregards the warnings of its most loyal international supporters.

Of course, the Israel lobby disagrees with the above characterization and chooses instead to frame the ongoing tragedy in terms that blame the Palestinians for their oppression and displacement. Meanwhile, the settlements expand, the separation wall extends, and the creeping apartheid of which former President Jimmy Carter warned becomes a tragic reality.⁷ The BDS movement is civil society’s nonviolent response to this ongoing Middle East tragedy. It is purely political speech in the tradition of Mahatma Gandhi, Martin Luther King, Jr., and Nelson Mandela.

⁵ Kerry Rebukes Israel, Calling Settlements a Threat to Peace - *The New York Times*
<https://www.nytimes.com/2016/12/28/us/politics/john-kerry-israel-palestine-peace.html>;
www.time.com/4619064/john-kerrys-speech-israel-transcript/

⁶ Speaking truth to our ally Israel - *The Washington Post*
https://www.washingtonpost.com/.../20ec9648-cecb-11e6-a87f-b917067331bb_story.ht..

⁷ Carter, J., *Palestine Peace Not Apartheid*, Simon & Schuster (2006)

Boycott, divestment, and sanctions as urged by the BDS movement constitute political speech as much as that of the civil rights and anti-Apartheid movements. The attempts urged by the Israel lobby to silence the BDS movement is an effort to broadly target political speech, an impermissible affront to the First Amendment.

When the Israel lobby demands legislation that utilizes the exercise of state power to demonize and/or discriminate against BDS proponents, it undermines the very First Amendment rights that protect their own speech. The Israel lobby is entitled to its opinions. It is not entitled to employ state power to discriminate against and ostracize its critics. A law that seeks to use state power to chill BDS is unconstitutional. We urge you to reject such affronts to our First Amendment Rights, and work to make certain that Senate Bill 170 does not become law. This is not complicated.

Sincerely,

1. Attorney John Fussell,
2. Mike Winterfield, West Hartford
3. Mongi Dhaouadi
4. Rev. David W. Good, Lyme
5. Corinne Good, Lyme
6. Win Heimer, West Hartford
7. Dan Durso, Director, Our Revolution CT Team, Glastonbury
8. Dave Roche, Bristol
9. Debra Cohen, Wethersfield
10. Jerry Brown, West Hartford
11. Shelly Altman, Chairperson Jewish Voice for Peace- New Haven
12. Marva Beckford
13. Carol Lambiase
14. Ana M. Lachelier, West Hartford
15. Rose Brown
16. Joseph P. Toner, F.S.T. Business Manager- Iron Workers Local 15, President- Hartford / New Britain Building Trades Council
17. John Bengtson
18. Florence Grieb
19. Fred Louis
20. Kim McClain
21. Bill Westervelt
22. June Pinkin

23. Omar Scott Antar,
24. Frederick T. Crosby, Old Lyme
25. Josh Perlstein, Faculty, CCSU
26. Ashley Malloy
27. Mary Ann Duval
28. Dominique Duval Johnson
29. Brian Steinberg, Hartford
30. Jeremy Zeedyk
31. Mary Hunt
32. Bobby Berriault, New Britain
33. Karim Ahmed
34. Lynn Fulkerson
35. Jim Hopkins, Bristol
36. Patricia Hopkins, Bristol
37. Stanley Heller, Executive Director Middle East Crisis Committee
38. Ali Ashakabai
39. Peter Marcuse, Waterbury
40. Francis Marcuse, Waterbury
41. Khaled Allabadi, West Hartford
42. Nina Sakun, Hartford
43. Mary Tomasetti, Westbrook
44. Thomas Connolly, West Hartford
45. Lynn Johnson
46. Rev. Rebecca Crosby, Old Lyme
47. Henry Lowendorf, New Haven
48. Attorney Peter Goselin
49. Vanessa Banti, New Haven
50. Elizabeth Viering, Stonington
51. Attorney Peter Viering, Stonington
52. Mami Nishimune, West Hartford
53. Attorney Margaret P. Levy, West Hartford
54. Nicholas Westbrook, Old Lyme
55. Annie McCarty, Old Lyme
56. Ghoufran Allababidi
57. Barbara Benjamin Haines, Essex
58. Angelica Harter
59. Attorney Richard Harter
60. Attorney Joe Cipparone
61. Rev. Carleen R. Gerber, Lyme
62. Bayan Mansour

63. Luke Ford
64. Maryam Bint Fareed
65. Kaniz Koli
66. Steven Schrag, Waterbury
67. Shehtaaj Lilaporla
68. Henry Clifford, Essex
69. Nina M. Stein, 380 Hitchcock Road, Waterbury CT 06705.
70. Aasiyya Ahmedd
71. Zeinab Badr
72. Usra Qureshi
73. Marrium Qureshi
74. Eda diBiccari, 99 Hedgehog Lane West Simsbury 06092
75. Susan Bramhall, New Haven
76. Robert Gelbach, Hamden
77. Catherine Jackson, New Haven
78. Ellen Rubin, New Haven
79. Thomas Buckley
80. Martha Renn, Old Lyme
81. Bill Slivinski, Old Lyme
82. George Rawitscher, Storrs
83. Beth Angel, East Hampton, Jewish Voice for Peace
84. Sadu Nanjundiah, Prof. Physics, CCSU, New Britain
85. Emily Fisher
86. Sana A. Khan
87. Rev. Steven Jungkeit, Old Lyme
88. Ahlam Shalout
89. Mark Shekleton
90. Evan Frtiz
91. Stephen Fournier, 74 Tremont St., Hartford, 06105
92. Stephen Vincent Kobasa, New Haven, CT
93. Dick Tilton
94. Elaine Tilton
95. Ruth B. Moynihan
96. Susan Hewes, MPH, Windham
97. Mary Lee Morrison, Hartford
98. Virginia Tomassetti, Westbrook
99. Laura Keith
100. Mark Keith
101. Patricia Nuelsen, New Haven
102. Asmaa Abdelati

103. Riddhi Thaker
104. Reem Elazazy
105. Ranea Al-Tikrit
106. Madiha Shafqat
107. Abigail Cipparone, Old Lyme
108. Joseph Pandolfo, 183 Perry Hill Rd., Ashford, 06278
109. Saniya Pathan
110. Gretel Diglio
111. Mary Snyder
112. Evan Griswold, Old Lyme
113. Lynn Coville, Westbrook
114. Menna El-fouly
115. Diana Abouchacra
116. Anna Andrews
117. Zaida Berrios
118. Norman Momowetu Clement, New Haven
119. Chris Garaffa, Coordinator, ANSWER Coalition – Connecticut
120. Timothee Goselin, New Haven
121. Maria A. Gutierrez, New Haven
122. H. Bindu Vanapalli, MD, MPH
123. Caryn A. Jensen
124. David H. Amdur
125. Carina A. Bandhauer, PhD.
126. Laura Lillian Best, Black Social Justice
127. Megan Fountain
128. Peggy Myers, Hamden
129. IV Staklo, Student, Univ. of New Haven
130. Roger Benham, Willimantic
131. Laura Rozza, Hartford
132. James Bhandary-Alexander, Attorney
133. Sarah Tracy-Wanck
134. Karen Grossi
135. Joelen Gates
136. Nancy Parker
137. Elaf Al-Wohaibi
138. Maheen Rahman
139. Anyssa Dhaouadi
140. Sue Frost, Old Lyme
141. Jeff Howard
142. Richard Nolan

143. Gary Gralton
144. Cindy Moeckel, 79 Amidon Rd., Asford, CT 06278
145. Jane Fried
146. Christopher Lawrie
147. Farhha Feroz
148. JoAnne Bauer Ph.D., Hartford
149. Paul Hammer, New Haven
150. Mohammad Ahmed
151. Yanil Teron
152. Ron S. Friedman, West Hartford
153. Jannat Khan
154. Evan Fritz
155. Rubayet Lasker
156. Deeba Khatri
157. Jade Rade
159. Sara Umair
160. Shaheera Khan
161. Sawera Hussan
162. Yasmeen Allam
163. Gresa Kukaj
164. Eric Stamm, 206 Oxford St Hartford 06105.
165. Randy McMahon, Willimantic, Connecticut 06226
166. Claire Connelly
167. Bill Shortell, New Britain
168. Fred Behringer, Old Lyme
169. Julie Martel, Old Lyme
170. Shelley Ramrattan
171. Benjamin B. Page
172. Edmund Smith
173. Celine Sullivan
174. Kathy Cooper
175. Leila Bowen
176. Alli Van Leer, New Haven
177. Ralph Jones, Ruling Elder Member First Presbyterian Church, New Haven
178. Brooks Blauser, Milford
179. Diana Heyman, West Hartford
180. Frank O’Gorman
181. Liz Aaronsohn, We Refuse to Be Enemies
182. Marie McCain
183. David Lacoss, Manchester

184. Joseph Baxer
185. Barbara A Bacewicz
186. Showing Up for Racial Justice, New Haven
187. Annie Munro
188. Joseph Wasserman
189. Talat Azimi, Storrs
190. Jacob Werblow, Ph.D., West Hartford
191. Brenda Boughan
192. Marissa Mcfadden
193. Judy Benton
194. Tulay Luciano
195. Joshua Blanchfield, Hartford
196. Elaine Wiatr
197. Clark Peters, Groton
198. Gerard Ferrari
199. Angie Parkinson
200. Attorney Leon Rosenblatt, West Hartford
201. Lucy Rosenblatt, West Hartford
202. Lynn Mason, New Cannan
203. Steven Fry, New Cannan
204. Matthew Byanyima
205. Hannah Simms
206. Julia Rosenblatt
207. Dave Rozza
208. Simon DeSantis
209. Katherine Bruns, West Hartford
210. Lucas Bruns, West Hartford
211. Timothy Bruns
212. Paul Hodel, Pres., Enduring Peace
214. Popi Beazoglou, West Hartford
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217. Dr. Barbara Edelstein, West Hartford
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219. Sally Beard
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224. Cressida Lui, New Haven

225. Bill Mannetti, Seymour
226. Ioanna Gutas, New Haven
227. Linda Buchanan, Hartford
228. Richard Dobratz, Coventry
229. Caitlin Harrity, Enfield
230. Rev. Dean Ahlberg
231. Jack Wentland
232. Joy Bush, Hamden
233. Craig Metz, Business Manager, IUOE Local 478
234. Yvonne Harris
235. Yi-Chun Tricia Lin, Ph.D.
236. Sandra Heath, Cos Cob
237. Doina Lavoie-Gonci
238. Don Gonci
239. Susan P. Sonstrom, Newington
240. Rev. Nancy McLaren
241. Susan Kayeum, West Hartford
242. Joan Overfield, Lyme
243. William H. McCormick II, Stamford
244. Peter Hornat, Oakdale
245. Kathy Chase
246. Steve Advocate, New Haven
247. Effie Ioannidou, Suffield
248. George Fares, Suffield
249. Christopher Hutchinson, Socialist Action CT
250. Steve Snipes, Middlefield
251. Allen Page, IUOE 478
252. Jeffrey Higgins, Woodstock
253. Rev. Matthew Emery, Storrs
254. Milton Moffitt
255. Mattie Renn, Old Lyme
256. Alfred Marder
257. Jennine Lupo
258. Jeff Neurath
259. Robert Dubrow, Hamden
260. Joy Gordon
261. Connie Hurt, Old Lyme
262. Elizabeth Neuse, Hamden
263. Francis Braulich, Hamden
264. Garrett Sullivan, East Haven

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268. Mike Schuster, Woodbury
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271. Jennifer Gionet
272. Sunny Khadjavi
273. Gary Spinner, New Haven
274. Mark McDonnell
275. Carolyn D. Shaw
276. Nancy Eberg
277. Melinda Tuhus
278. Ellen F. McCarthy, Bridgeport
279. Laura Kayeum, West Hartford
280. Joanna Heller
281. Rev. Alice De V. Perry
282. Susan Klein
283. Serafino Bueti, Torrington
284. Rev. Charlotte K. White, Guilford
285. Hannah H. Leckman, Hamden
286. Pete Cruikshank
288. Alice Cruikshank
289. Janeth Andrea Veloza
290. Alexander Ehrenreich
291. Natalia Torres
292. Peter Immordino, Essex
293. Susan Immordino, Essex
294. Linda Fry, Wilton
295. Phillip Brewer, Hamden
296. Janet C. Spinner, New Haven
297. John P. Livingstone
298. Yasmin Haque, Hamden
299. Linda Blum, Storrs
300. John Capobianco, Terryville
301. Francine Ungaro, Southington
302. Phil Rydingsward, West Hartford
303. Attny. Barbara Collins, West Hartford
304. Patrick Korth, Hamden
305. Edward R. Savage, Ed.D., Bloomfield

306. Cory Strain, Stratford
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309. Bob Hurvitz, West Hartford
310. Leila Fussell, West Hartford
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315. Nina and David Fry-Kizler, Richmond, CA
316. Boulos Harb, Milford
317. Vitto A. Bonanno, Guilford
318. James V. Papalio, Meriden
319. Sadie Boone, Bozrah
320. Maya A. Fussell, West Hartford
321. Louise Simmons, Ph.D., Hartford
322. Nancy Latif, West Hartford
323. Lynne Butcher, Glastonbury
324. Gail M. Larabee, Glastonbury
325. Susan Garvey, Trinity College
326. Francis Braunlich
327. Justine McCabe, Ph.D., New Milford
328. Athenaide Dallett, Kent
329. Barbara Sarmento, West Hartford
330. Jamshid Marvasti, M.D., Manchester
331. Robert McCracken, Lyme
332. Sarah McCracken, Lyme
333. Yann van Heurck, Madison
334. Ababkre Mounir, New Haven
335. Susan Sonstrom, Newington
336. William Sonstrom, Newington
337. Hoda Abuhamed, Waterbury
338. Ramadan Ellafi, Waterbury
339. Judith Shosie, Guilford
340. Robert Raines, Guilford
341. Cynthia Raines, Guilford

