

The Continuing Hypocrisy of the ACLU

In a recent news article, the ACLU doubled down on its support of the Antisemitic BDS Movement. Here are the facts.

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Approximately seven years ago, an old friend in Israel reached out to ask how an openly discriminatory campaign against Jews could be legal in the United States. This one question led to a years-long effort to research the background of the campaign known as the BDS (Boycott, Sanction and Divestment) movement and the laws that apply to such campaigns and the founding of Zachor Legal Institute.



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Zachor was the first legal organization to publish a breadth of scholarship on BDS & the law and urges the 8th Circuit to uphold the longstanding right of states to choose how to spend taxpayer funds.”

*Marc Greendorfer, President,
Zachor Legal Institute*

What Zachor found resulted in four law review articles (with a fifth in the final stages of drafting) on the topic of the First Amendment, state power to refuse to do business with parties engaging in discrimination and the fact that BDS is nothing more than a clever repackaging of Palestinian Arab terror aimed at ethnically cleansing Jews from their homeland.

Zachor has been active in not only researching and publishing groundbreaking legal research into the issue of the First Amendment and BDS, we've participated in the court challenges to state laws that seek to prevent

taxpayer funds from being spent in support of those furthering the BDS campaign. Through these court proceedings, we've found that the ACLU, in support of and combined with an organization that was named as an unindicted co-conspirator in an Islamic terror funding prosecution (CAIR), exchanged its long history of civil rights activism to devote its massive resources and public image to further the genocidal BDS campaign.

On December 26, 2021, [in a story about one of the court challenges to a state BDS law](#) (in which Zachor submitted amicus briefs), a staff attorney for the ACLU made the incredible assertion that state laws that simply require the state to not do business with parties who admit to engaging in discriminatory acts are violations of the First Amendment, while at the same time his organization has spent decades defending very similar laws when they are applied to other

forms of discrimination.

Even more incredible, the ACLU bases its arguments on the inane claim that discriminating against Jews is protected political activity, while discriminating against those in the LGBTQ, Black, Asian and other communities is blatant discrimination that can never be countenanced, especially if there are taxpayers funds being used to support that discrimination.

As an activist organization, we understand that there is a bit of puffery and zealous representation of a client's interest at play in these cases, but what the ACLU's attorney stated in the December 26 story goes well beyond puffery and zealous representation. Indeed, Zachor has previously been so concerned that the ACLU had abandoned its role as an honest broker that Zachor engaged in research on the organization and its ties to BDS.

The result of that research is a [report titled "Not Your Parents' ACLU"](#). This report outlines the full extent of the ACLU's embrace of Antisemitism and BDS and details how the ACLU attorney quoted in the December 26 article not only has shown open support for BDS, he received an award from one of the primary promoters of BDS and has spoken in support of other BDS groups that have been identified as connected to foreign terror groups.

Seeing the ACLU's attorney contort First Amendment caselaw in the December 26 article to create the false narrative that BDS is a civil rights movement that only speaks out against political issues was not surprising, but it still is shocking that the ACLU has embraced a campaign to ethnically cleanse Israel of Jews and deny the Jewish people the basic right enjoyed by every other nation on earth, that of self determination in their historic homeland.

Indeed, as Zachor's law review articles demonstrated before the ACLU began its scorched earth litigation campaign in support of Antisemitism, there is ample caselaw that shows when a boycott campaign focused on foreign disputes interferes with U.S. commerce, laws combating such commercial interference do not have the type of First Amendment protections that are applicable to domestic disputes that relate to the Constitutional rights of the boycotters themselves. The ACLU's attempt to conflate the American civil rights movement and the Constitutional protections implemented to protect vulnerable minority groups, on the one hand, with Palestinian Arab terror campaigns against Jews and their homeland, on the other hand, is, in a word, reprehensible.

Further, there is no question that a state has the right to choose to not do business with parties engaging in discrimination, which is all that state anti-BDS laws do. Indeed, this basic legal fact is one that is the basis of many laws that the ACLU supports in other situations, from forcing cake bakers to express beliefs that are contrary to their own religious beliefs to using state expenditures to punish those the state disagrees with.

The ACLU even has spoken out against negative labeling of countries or ethnicities, as they alleged happened when the prior administration referred to COVID-19 as the Wuhan Virus, yet

they eagerly support a campaign that labels Jews as usurpers and has a goal of disenfranchising an entire ethnicity of their only homeland.

Zachor is proud to have been the first legal organization to publish a breadth of scholarship on the topic of BDS and the First Amendment and hopes that the 8th Circuit Court of Appeals delivers a strong message to those who support BDS, including the ACLU, that no state is obligated to spend taxpayer funds in support of ethnic cleansing and Antisemitism.

Marc Greendorfer is the President of Zachor Legal Institute and his law review articles have been published in the American University's Business Law Review, Cardozo Law Review de novo, Roger Williams University Law Review and Campbell University Law Review and cited to in the court challenges to anti-BDS laws.

Marc Greendorfer
Zachor Legal Institute
+1 925-328-0128
[email us here](#)

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