

## Freedom of Speech and the Right to Boycott

SPONSOR: Mr. John Heermans and the Rev. Craig Smith

### CONTACT PERSONS:

The Rev. Craig Smith; craigsmith23@gmail.com; 802-652-0908 (Before October 1)

Mr. John Heermans; heermansjg@yahoo.com; 802-578-8976 (After October 1).

*Resolved*, That the 186<sup>th</sup> Convention of the Diocese of Vermont urge the President of the United States and the Vermont congressional delegation to oppose 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.

### EXPLANATION:

*I am writing today to express grave concern about a wave of legislative measures in the United States aimed at punishing and intimidating those who speak their conscience and challenge the human rights violations endured by the Palestinian people.* [Desmond Tutu, Statement issued through Oryx Media, April 2, 2014; text is below]

Archbishop Tutu's letter focused on legislation, now adopted by at least 23 states and proposed at the federal level, in opposition to the movement known as Boycott, Divestment, and Sanctions (BDS), a nonviolent movement directed toward American, Israeli, and other companies that support or enable the Israeli occupation of Palestine. Such legislation labels support for boycott and divestment as anti-Semitic and penalizes supportive companies, organizations, and, in some instances, individuals with fines and the loss of state contracts and assistance.

Boycotts as nonviolent political actions are an American tradition, with roots extending to the pre-Revolutionary boycott of British tea. As far back as the 1955-56 Montgomery Bus Boycott, the Supreme Court has consistently considered boycotts protected speech under the First Amendment. Some examples of effective boycotts include the 1965-66 grape boycott in the Central Valley that birthed the United Farm Workers, the South Africa boycott, which The Episcopal Church supported in 1985 (Res. 1985-D073), and, most recently, the boycott of North Carolina stemming from its anti-LGBT legislation.

The current anti-boycott legislation at the state and federal levels is opposed by, among others, the ACLU, the Center for Constitutional Rights, and the Anti-Defamation League of B'nai B'rith. In November, 2017, twelve of The Episcopal Church's ecumenical partner churches and twenty-eight activist organizations released a public letter calling the anti-boycott legislation pending in Congress and in state legislatures "a blatant infringement on First Amendment rights," and pledged to defend the right of churches and organizations to use economic measures in the specific case of Israel-Palestine.

The Episcopal Church affirmed in Resolution 1991-D122 that legitimate criticisms of Israeli government policies and actions are not anti-Semitic. While the 79<sup>th</sup> General Convention (2018) did not directly address the anti-boycott legislation, it did adopt Resolution B016 [see text below] to join with the Evangelical Lutheran Church of America in how it sets investment policy. B016 directs the Committee on Corporate Social Responsibility (CSSR) to develop criteria for Israel/Palestine based on a human rights investment screen and past actions of General Convention and Executive Council; to encourage an increase in positive investment in Palestine; and to encourage continued engagement in shareholder advocacy regarding human rights in Israel and the occupied territories.

Any legislation that suppresses legitimate criticism of public policy, and that restricts freedom of expression and the ability to exercise public witness through boycotts or investment and selective purchasing practices violates the U.S. Constitution. While the Church and its members may not be of one mind about which measures are most effective, the Church must collectively affirm and defend the right of individuals, congregations and organizations to use economic measures in the specific case of Israel-Palestine relations.

**General Convention Resolution 2018-B016, Adopt ELCA Action on Israel/Palestine**

*Resolved*, the House of Bishops concurring, That General Convention join with the Evangelical Lutheran Church of America's action, CA 16.06.31, "Justice for the Holy Land Through Responsible Investment," and direct our Executive Council's Committee on Corporate Social Responsibility to develop criteria for Israel and Palestine based on a human rights' investment screen and the actions of General Convention and Executive Council over the past seventy years; and be it further

*Resolved*, That General Convention continue to encourage members, congregations, dioceses, and institutions of the Episcopal Church to increase positive investment in Palestine and other under-resourced areas where human rights abuses materially impact the well-being of all people; and be it further

*Resolved*, That General Convention continue to encourage CCSR to engage in shareholder advocacy in support of human rights in Israel and the Occupied Territories, exercising the right of a shareholder to submit resolutions at a corporation's annual meeting.

**Archbishop Desmond Tutu's Statement on Boycott, Divestment, and Sanctions (BDS)**

*[This statement was issued for Archbishop emeritus Desmond Tutu by Oryx Media, April 2, 2014]*

I am writing today to express grave concern about a wave of legislative measures in the United States aimed at punishing and intimidating those who speak their conscience and challenge the human rights violations endured by the Palestinian people. In legislatures in Maryland, New York, Illinois, Florida, and even the United States Congress, bills have been proposed that would either bar funding to academic associations or seek to malign those who have taken a stand against the Israeli Occupation of Palestine.

These legislative efforts are in response to a growing international initiative, the Boycott, Divestment, and Sanctions (BDS) movement, of which I have long been a supporter. The BDS movement emanates from a call for justice put out by the Palestinian people themselves. It is a Palestinian-led, international non-violent movement that seeks to force the Israeli government to comply with international law in respect to its treatment of the Palestinian people.

I have supported this movement because it exerts pressure without violence on the State of Israel to create lasting peace for the citizens of Israel and Palestine, peace which most citizens crave. I have witnessed the systematic violence against and humiliation of Palestinian men, women and children by members of the Israeli security forces. Their humiliation and pain is all too familiar to us South Africans.

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 tactics of non-violence to further their efforts to end the oppression associated with the Israeli Occupation.

The legislations being proposed in the United States would have made participation in a movement like the one that ended Apartheid in South Africa extremely difficult.

I am also deeply troubled by the rhetoric associated with the promulgation of these bills which I understand, in the instance of Maryland, included testimony comparing the boycott to the actions of the Nazis in Germany. The Nazi Holocaust which resulted in the extermination of millions of Jews is a crime of monstrous proportions. To imply that it is in any way comparable to a nonviolent initiative diminishes the horrific nature of that genocidal and tragic era in our world history.

Whether used in South Africa, the US South, or India, boycotts have resulted in a transformative change that not only brought freedom and justice to the victims but also peace and reconciliation for the oppressors. I strongly oppose any piece of legislation meant to punish or deter individuals from pursuing this transformative aspiration. And I remain forever hopeful that, like the nonviolent efforts that have preceded it, the BDS movement will ultimately become a catalyst for honest peace and reconciliation for all our brothers and sisters, both Palestinian and Israeli, in the Holy Land.