

### J Street Analysis of the "Israel Anti-Boycott Act":

As an organization [opposed to the Global Boycott, Divestment and Sanctions \(BDS\) movement](#) against the State of Israel, J Street is deeply concerned by legislation that would, under the guise of combating BDS, actually harm US and Israeli interests by extending US legal protections to illegal West Bank settlements that undermine the prospects for a two-state solution to the Israeli-Palestinian conflict. **We therefore oppose S.720/H.R.1697** as written, as it raises a number of concerns:

- **Green Line-blurring definition of Israel**

The bill defines “actions to boycott, divest from, or sanction Israel” as having the meaning given that phrase in the Trade Priorities and Accountability Act of 2015, which in turn defines such actions as “intended to penalize or otherwise limit commercial relations specifically with Israel or persons doing business in Israel **or in Israeli-controlled territories**” (emphasis added).

This definition - which the [Congressional Research Service noted earlier this month](#) has been included in a number of recent bills - blurs the critical distinction in US law between the State of Israel and the territories it has occupied since 1967, breaking with 50 years of US policy regarding Israeli settlements in the West Bank. This definition's inclusion in the Trade Facilitation and Trade Enforcement Act (in the very limited context of trade negotiating objectives) elicited an objection from President Obama in [his signing statement](#) that "Certain provisions of this Act, by conflating Israel and 'Israeli-controlled territories,' are contrary to longstanding bipartisan United States policy."

By seeking to erase the legal distinction between Israel and the settlements and placing the settlements, in effect, under US legal and diplomatic protection, proponents of this definition have used purportedly anti-BDS measures as pro-settlement, anti-two-state solution vehicles. Such efforts are both divisive and counterproductive. Instead of bringing opponents of the Global BDS Movement together into a broad coalition, they divide us by making the issue about the settlements.

The bill's inclusion of a "rule of construction" regarding US policy toward Israeli-Palestinian negotiations does not cure this problem, because the functional effect of the bill would still be to require the US Government to treat Israel and the occupied territories as a single entity - and in this case, in a criminal statute (see below). If, as its proponents argue, the expanded definition of Israel included in the bills is not meant to change US law or policy, then the references to it could simply be stricken from the text. The adamant resistance of the definition's proponents to doing so is conclusive evidence that this change in US law and policy is, in fact, the entire point of the legislation.

- **Criminalizing Measures Limited to the Settlements**

Beyond undermining longstanding US policy toward the settlements, S.720/H.R.1697's massive expansion in the definition of boycotts against Israel in the context of the existing US anti-boycott statute's declaration of policy (50 USC §4602) creates a risk that individuals complying with or merely “furthering” or “supporting” a foreign country's or international governmental organization's boycott targeted exclusively at the settlements could be prosecuted for violating US anti-boycott laws (50 USC §4607) - a criminal offense. The penalties associated with these offenses are serious, potentially including substantial fines and prison time of up to 10 years (50 USC §4610).

While it would ultimately be up to the courts to decide whether someone was supporting a particular boycott by a foreign country or international governmental organization in violation of the modified US anti-boycott statute, this bill could give Attorney General Jeff Sessions the power to prosecute any American who chooses not to buy settlement products for a felony offense. That kind of authority should not be given to any administration, let alone one that has engaged in extreme rhetoric against political opponents, including threats to "lock [them] up."

- **Possible Free Speech Concerns**

Noting that we are not free speech experts, the bill's criminalizing of the mere requesting or furnishing of information related to a boycott - whether directed against the settlements or otherwise - raises possible First Amendment issues on which we'd recommend you consult with free speech experts. As the [Congressional Research Service noted](#) in its excellent report examining the issue, "the degree to which a restriction on BDS activity would implicate the First Amendment and whether, even if it did, it would nonetheless be permissible turns on a number of unsettled questions." And contrary to the assertions of those who say there is legal precedent on-point, CRS found that "No definitive precedent exists examining whether BDS activity is protected by the First Amendment."