

National
Coalition
Against
Censorship

19 Fulton Street, Suite 407
New York, NY 10038
tel: (212) 807-6222
fax: (212) 807-6245
e-mail:
ncac@ncac.org
web:
www.ncac.org

Statement on

A.8220-A (Lavine) and S.6086 (Gianaris); A.9036 (Weinstein) / S.6378-A (Martins)

Proposed Acts to amend the state finance law and the retirement and social security law, regarding economic sanctions for engaging in politically motivated boycotts

April 4, 2016

The National Coalition Against Censorship (NCAC),ⁱ a coalition of national organizations dedicated to protecting First Amendment rights, strongly opposes proposed legislation that would prohibit New York state agencies from engaging in business with, and would impose financial sanctions on, any person engaged in a boycott against Israel or other “American allies.”

Such a law would clearly conflict with First Amendment protection for freedom of expression and association.

It is beyond dispute that boycotts are a form of expression protected by the First Amendment. In *NAACP v. Claiborne Hardware*, 458 U.S. 886, 911-12 (1982), the Supreme Court held that a boycott of white merchants in Claiborne County, Mississippi, to protest racial discrimination “clearly involved constitutionally protected activity” in which First Amendment rights to “speech, assembly, association, and petition,” were exercised “to bring about political, social, and economic change.”

Furthermore, the Court has ruled in *O’Hare Truck Svc. v. City of Northlake*, 518 U.S. 712, 717 (1996), that the government is constitutionally prohibited from making political beliefs or affiliations a condition of receiving public contracts: “[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect

NCAC PARTICIPATING ORGANIZATIONS

Actors’ Equity Association
American Association of School Administrators
American Association of University Professors
American Association of University Women
American Booksellers for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Jewish Committee
American Library Association
American Literary Translators Association
American Orthopsychiatric Association
American Society of Journalists & Authors
Americans United for Separation of Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children’s Literature Association
College Art Association
Comic Book Legal Defense Fund
The Creative Coalition
Directors Guild of America
Dramatists Guild of America
First Amendment Lawyers Association
International Reading Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of Churches
National Council of Jewish Women
National Council of Teachers of English
National Education Association
National Youth Rights Association
The Newspaper Guild/CWA
PEN American Center
People for the American Way
Planned Parenthood Federation of America
Project Censored
SAG-AFTRA
Sexuality Information & Education Council of the U.S.
Society of Children’s Book Writers & Illustrators
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Church of Christ
Office of Communication
United Methodist Church
United Methodist Communications
Women’s American ORT
Woodhull Sexual Freedom Alliance
Writers Guild of America, East
Writers Guild of America, West

be penalized and inhibited. . . . Such interference with constitutional rights is impermissible.’” (Citations omitted).

Boycotts can be highly effective in delivering a message, and as such they have a respected place as a form of political speech, from the colonial boycott of British goods to protest taxation without representation, to the boycott of buses in Montgomery, Alabama, in support of Rosa Parks after she refused to sit in the back of the bus, to the boycott against South Africa to protest apartheid.

The proposal, if adopted, would clearly chill protected political expression. As the New York Civil Liberties Union points out, the “blacklist” would include “secular and faith-based groups that provide social services under state contract; trade unions; Jewish philanthropic groups; academic associations; and political advocacy organizations.”

If enacted, the bills would almost surely be found unconstitutional, because they violate one of the least ambiguous mandates in First Amendment law:

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 or force citizens to confess by word or act their faith therein.

West Virginia Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

We strongly urge members of the New York State Legislature to demonstrate their commitment to fundamental constitutional rights by rejecting these proposals.

i The views expressed here are those of NCAC and do not necessarily represent the views of each of its members.