

“ANTI-ISRAEL,” A CAMOUFLAGE PLATFORM FOR ANTISEMITISM

ALAMEA DEEDEE BITRAN*

INTRODUCTION

“Anti-Israel” has become a camouflage platform for expressing antisemitism¹ under a more socially acceptable umbrella.² There is no

* Attorney at Law; J.D., *magna cum laude*, Florida International University College of Law, 2016; B.S., *summa cum laude*, University of Florida, 2012. Many thanks to the following scholars for their guidance: Professor Alan Dershowitz (Harvard Law School), Professor Mark Goldfeder (Emory University School of Law), Professor Eugene Kontorovich (Northwestern University School of Law), Professor Elizabeth Price Foley (Florida International University College of Law), Professor Marci Hamilton (Cardozo School of Law), and Professor Elliot Bartky (Indiana University–Purdue University Fort Wayne). The author of this Article, Alamea Deede Bitran, Esq., takes sole responsibility for the conclusions reached and is extremely grateful to the aforementioned professors.

1. See *infra* note 4 and accompanying text.

2. See, e.g., Christine DeSouza, *BDS Resolution Battle Continues at USF*, HERITAGE FLA. JEWISH NEWS (Feb. 5, 2016), <http://www.heritagefl.com/story/2016/02/05/news/bds-resolution-battle-continues-at-usf/5695.html>; Robert Mackey, *University of California Adopts Policy Linking Anti-Zionism to Anti-Semitism*, INTERCEPT (Mar. 23, 2016, 5:57 PM), <https://theintercept.com/2016/03/23/university-of-california-adopts-policy-linking-anti-zionism-to-anti-semitism/>; Eliana Rudee, *Blurred Lines: Anti-Semitism vs. Anti-Israel*, OBSERVER (Oct. 17, 2014, 12:27 PM), <http://observer.com/2014/10/blurred-lines-anti-semitism-vs-anti-israel/>; Jared Samilow, *Watch Out, Jewish Students: The Anti-Israel Movement Will Boycott You Next*, HAARETZ (Mar. 24, 2016, 11:34 PM), <http://www.haaretz.com/misc/iphone-article/.premium-1.710751> (referring to the BDS movement and anti-Israel sentiment, and noting, “[t]his form of discrimination is more sophisticated than the coarse anti-Semitism of the past, but that only makes it more dangerous and tougher to prove.”). In March of 2016, the University of California adopted a policy linking antisemitism to anti-Zionism because,

“[M]anifestations of anti-Semitism have changed” as a result of debates over Israel on college campuses and “expressions of anti-Semitism are more coded and difficult to identify.”

. . . [O]pposition to Zionism often is expressed in ways that are not simply statements of disagreement over politics and policy, but also assertions of prejudice and intolerance toward Jewish people and culture.

Mackey, *supra*. “On college campuses, in the press, and among political leaders worldwide, Jews are often targeted by way of denouncing Israel. When Jews raise this concern, maligners regularly argue that they were not being anti-Semitic, but anti-Israel or anti-Zionism.” Rudee, *supra*. At the University of South Florida (USF), the student government attempted to pass a boycott on Israel resolution and a USF student stated,

My eyes were opened to the terrifying reality that anti-Semitism still exists, when the Senate passed a bill calling on the University to divest from Israel. It was claimed by the sponsors of the resolution that it is not anti-Semitic. How can this be the case when the *only country mentioned in the resolution as the sole violator of human rights in the world is Israel?*

DeSouza, *supra* (emphasis added).

“legal” solution to combat antisemitism and all of its ripple effects. Instead, educating the general public with the knowledge necessary to discern antisemitic rumors from reality and passing remedial legislation are important steps to combatting bigotry and hatred.³

I. ANTISEMITISM’S NEWEST WAVE: THE BDS MOVEMENT

“Antisemitism” is the making of “stereotypical allegations about Jews as such or the power of Jews as a collective—especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.”⁴ Additionally, “antisemitism” includes “[h]olding Jews collectively responsible for actions of the state of Israel.”⁵ Anti-Israel is no longer a distinct concept from antisemitism, because the two concepts are so intertwined that they have fused into the same monster.⁶ There are

3. See *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (stating that “[t]he Government can . . . selectively fund a program to encourage certain activities . . . without” it being discrimination); Dalia Perez, *Letter To The Editor: Objectivity Is Necessary for Journalistic Integrity*, FIUSM (Mar. 10, 2016), <http://fiusm.com/2016/03/10/letter-to-the-editor-objectivity-is-necessary-for-journalistic-integrity/> (highlighting the importance of objective journalistic integrity after Ambassador Danon’s visit to FIU was misrepresented in the school newspaper). See generally *Wave of Palestinian Violence Accompanied by Spate of Bad Writing*, CAMERA (Oct. 14, 2014), http://www.camera.org/index.asp?x_context=2&x_outlet=118&x_article=3132 (highlighting various media misrepresentations that characterize terrorist assailants as victims).

The Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other. “[A] legislature’s decision not to subsidize the exercise of a fundamental right does not infringe the right.”

Rust, 500 U.S. at 193 (quoting *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983)).

4. *Defining Anti-Semitism*, U.S. DEP’T OF ST. (June 8, 2010), <http://www.state.gov/j/drl/rls/fs/2010/122352.htm>.

5. Mark Goldfeder, *Defending the Oppressed and Putting an End to Anti-Israel, Anti-Semitic Discrimination*, ACLJ, <http://aclj.org/israel/defending-oppressed-putting-an-end-to-anti-israel-anti-semitic-discrimination> (last visited Oct. 19, 2016).

6. See *Findings and Recommendations of the United States Commission on Civil Rights Regarding Campus Anti-Semitism*, USCCR (Apr. 3, 2006), <http://www.usccr.gov/pubs/050306FRUSCCRRCAS.pdf> (“Anti-Semitic bigotry is no less morally deplorable when camouflaged as anti-Israelism or anti-Zionism.”); *Dubious Distinction: California Colleges Tally Most Incidents of Campus Antisemitism*, C. FIX (Mar. 15, 2016), <http://www.thecollegefix.com/post/26626/> [hereinafter THE COLLEGE FIX].

[T]here is a strong correlation between “anti-Zionist” campus groups (like Students for Justice in Palestine) and antisemitism: “99% of schools with one or more active anti-Zionist groups had one or more incidents of antisemitic activity, whereas only 16% of schools with no active anti-Zionist student group had incidents of overall anti-

narrow instances where anti-Israel sentiment is wholly distinct from antisemitism, but that is limited to legitimate criticisms of Israel’s policies, not rationale grounded in antisemitic notions of Jewish power or influence.⁷

In response to the latest wave of antisemitism, the conduct associated with the “Boycott, Divestment, and Sanctions” (“BDS”) movement,⁸ numerous state legislatures are enacting, or have already enacted, wholly constitutional remedial legislation such as “anti-BDS laws.”⁹ Florida, Illinois, Indiana, Colorado, Tennessee, Arizona, South Carolina, Virginia, New York, Pennsylvania, Georgia, New Jersey, Alabama, Iowa, Kentucky, California, Ohio, Massachusetts, Texas, and Louisiana have passed anti-BDS laws or are in the process of passing such laws.¹⁰ Pitched as a

Semitic activity.”

THE COLLEGE FIX, *supra*.

7. See *Defining Anti-Semitism*, *supra* note 4 (defining anti-semitism as “stereotypical allegations about Jews as such or the power of Jews as a collective—especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.”). For example, claiming that a candidate for public office must speak “kindly” about *Israel* because the *Jews* own every media outlet is blatant antisemitism—it is expressing antisemitic sentiment grounded in Jewish power while using the concepts of Israel and Jews interchangeably. *Id.*

8. *What Is BDS?*, BDS MOVEMENT, <https://bdsmovement.net/what-is-bds> (last visited Oct. 19, 2016) (defining the Boycott, Divestment, Sanctions (BDS) as a “Palestinian-led movement for freedom, justice and equality,” and stating that “BDS upholds the simple principle that Palestinians are entitled to the same rights as the rest of humanity.”).

9. See, e.g., FLA. STAT. § 215.4725 (2016).

10. See *id.* (Florida’s anti-BDS law); ARIZ. REV. STAT. ANN. §§ 35-393–393.03 (2016) (Arizona’s anti-BDS law); COLO. REV. STAT. §§ 24-54.8-201–204 (2016) (Colorado’s anti-BDS law); 40 ILL. COMP. STAT. 5/1-110.16 (2016) (Illinois’ anti-BDS law); IND. CODE §§ 5-10.2-11 (2016) (Indiana’s anti-BDS law); S.J. Res. 6, Reg. Sess. (Ala. 2016) (Alabama’s anti-BDS law); H. Res. 250, Reg. Sess. (Ky. 2016) (Kentucky’s anti-BDS law); H. Con. Res. 57, 42nd Reg. Legis. Sess. (La. 2016) (Louisiana’s anti-BDS law); S.B. 1923, 217th Leg. (N.J. 2016) (New Jersey’s anti-BDS bill); S.B. 6378, 238th Legis. Sess. (New York’s anti-BDS bill); H.J. Res. 177, Reg. Sess. (Va. 2016) (Virginia’s anti-BDS bill); Assemb. B. 1551, Reg. Sess. (Cal. 2015) (California’s anti-BDS bill); S.B. 327, 153rd General Assemb. (Ga. 2015) (Georgia’s anti-BDS bill); S. Study B. 3087, 86th General Assemb. (Iowa 2015) (Iowa’s anti-BDS bill); H.D. 4156, 189th Sess. (Mass. 2015) (Massachusetts’s anti-BDS bill); H.B. 476, 131st General Assemb. (Ohio 2015) (Ohio’s anti-BDS bill); H.B. 1018, 199th General Assemb. (Pa. 2015) (Pennsylvania’s anti-BDS bill); S.J. Res. 170, 109th General Assemb. (Tenn. 2015) (Tennessee’s anti-BDS bill); H. Res. 2505, 84th Leg. (Tex. 2015) (Texas’s anti-BDS bill); H. Res. 4635, 120th Sess. General Assemb. (S.C. 2014) (South Carolina’s anti-BDS bill); see also Sean Savage, *Tennessee General Assembly Becomes First US State Legislature to Condemn BDS*, UNITED WITH ISR. (Apr. 22, 2015), <http://unitedwithisrael.org/tennessee-general-assembly-becomes-first-state-legislature-to-condemn-bds/> (noting that “the BDS movement is ‘one of the main vehicles for spreading anti-Semitism and advocating the elimination of the Jewish state’ [and that] BDS activities in Tennessee ‘undermine the Jewish people’s right to self-determination, which they are fulfilling in the State of Israel.’”); *Indiana General Assembly Becomes 2nd State Legislature to Pass Anti-BDS Bill*, JEWISH NEWS SER. (Apr. 30, 2015), <http://www.jns.org/news->

peaceful movement, “Boycott, Divestment, and Sanctions” (“BDS”) calls for boycotting brands that are Israeli-invented or sold within Israel to destroy Israel’s existence.¹¹ California Assemblyman Travis Allen cautioned,

BDS poses as a peaceful movement interested in “social justice” for Palestinians. The reality is more sinister: The BDS movement seeks to delegitimize Israel’s very identity and existence and ultimately bring about its destruction and replacement with a Palestinian state, which would be dominated by the terrorist group Hamas.¹²

briefs/2015/4/30/indiana-general-assembly-becomes-2nd-state-legislature-to-pass-anti-bds-bill#.VvU9BeIrlIU (noting that BDS “represents an attack, not only on Jews, but on the fundamental principles of the United States.”). See generally *Here Are the States That Have Signed Anti-BDS Laws*, VIRTUAL JERUSALEM (Mar. 30, 2016), <http://www.virtualjerusalem.com/news.php?Itemid=20625> (providing a comprehensive list of states that have signed Anti-BDS laws); *The Stealth Campaign to Use U.S. Law to Support Settlements: Taking the Battle to the States*, PEACENOW.ORG, <https://peacenow.org/WP/wp-content/uploads/State-BDS-and-Settlement-legislation-table.pdf> (last updated Sept. 27, 2016) (providing a detailed chart on anti-BDS legislation in different states).

11. See As’ad AbuKhalil, *A Critique of Norman Finkelstein on BDS*, ALAKHBAR ENG. (Feb. 17, 2012, 2:59 PM), <http://english.al-akhbar.com/node/4289>; Daniel Greenfield, *U of California Event: “Bringing Down Israel Will Benefit Everyone in the World”*, FRONTPAGE MAG. (Dec. 5, 2014), <http://www.frontpagemag.com/point/246818/u-california-event-bringing-down-israel-will-daniel-greenfield> (quoting Lara Kiswani, executive director of the Arab Resource and Organizing Center, as stating, “[b]ringing down Israel will really benefit everyone in the world and everyone in society, particularly workers.”); Dr. Alex Grobman, *BDS: The Movement to Destroy Israel*, ISR. NAT’L NEWS (Feb. 21, 2016), <http://www.israelnationalnews.com/Articles/Article.aspx/18438#.VvXWq-IrLIU> (“[T]he Palestinian Arabs are determined to use [BDS] to delegitimize and dehumanize the Jewish state.”); *The Bernie Sanders Interview*, MSNBC (Mar. 21, 2016), <http://www.msnbc.com/all-in/watch/the-bernie-sanders-interview-649590339698> (quoting 2016 Presidential Candidate Bernie Sanders as stating, “not to appreciate that there is some level of anti-Semitism around the world involved in [the BDS movement] I think would be a mistake.”); Rami Younis, *Interview: The Man Behind the BDS Movement*, 972MAG.COM (June 14, 2015), <http://972mag.com/interview-the-man-behind-the-bds-movement/107771/> (quoting BDS founder Omar Barghouti as saying, “a BDS campaign should have a realistic chance of success, beyond simply raising awareness, such as persuading an international company or institution to end support for an Israeli company.”). A BDS advocate and professor at California State University shared the following:

Finkelstein rightly asks whether the real aim of BDS is to bring down the state of Israel. Here, I agree with him that it is. That should be stated as an unambiguous goal. There should not be any equivocation on the subject. Justice and freedom for the Palestinians are incompatible with the existence of the state of Israel.

AbuKhalil, *supra*.

12. Assemblyman Travis Allen, *California Should Stand with Israel and Boycott the Boycotters*, WASH. EXAMINER (Mar. 29, 2016, 12:01 AM), <http://www.washingtonexaminer.com/california-should-stand-with-israel-and-boycott-the-boycotters/article/2587027> [hereinafter Allen, *Boycott the Boycotters*]; see Administrator, *Gov. Rick Scott Signs Legislation to Support Israel*, FLGOV.COM (Mar. 10, 2016), <http://www.flgov.com/2016/03/10/gov-rick-scott-signs-legislation-to-support-israel/>;

The strongest predictor of campus antisemitism is a local BDS campaign.¹³ BDS founder, Omar Barghouti, shared, “I clearly do not buy the two state solution . . . if the refugees were to return, you would not have a two state solution. . . . You’ll have a Palestine next to a Palestine, rather than a Palestine next to Israel.”¹⁴ Stanley Tate, a founding member of the American Israel Public Affairs Committee (AIPAC)¹⁵ and Florida’s Prepaid College Program explained,

Assemblyman Travis Allen, *Assemblyman Travis Allen Announces Strong Bi-Partisan Coalition Behind AB 1552 to End Contracting with Companies That Engage in Boycotts Due to Bigotry and Discrimination*, PR NEWSWIRE (Mar. 15, 2016), <http://www.prnewswire.com/news-releases/assemblyman-travis-allen-announces-strong-bi-partisan-coalition-behind-ab-1552-to-end-contracting-with-companies-that-engage-in-boycotts-due-to-bigotry-and-discrimination-300236357.html> [hereinafter Allen, *Bi-Partisan Coalition*]; Sergio Carmona, *Municipality Passes Anti-BDS Ordinance*, SUN SENTINEL (Dec. 18, 2015, 3:30 PM), <http://www.sun-sentinel.com/florida-jewish-journal/news/miami-dade/fl-jjdc-ordinance-1223-20151218-story.html> (“The BDS movement is a global propaganda campaign against Israel that serves as thin cover for anti-Semitism—the levels of which we have not seen in the Western World in over 60 years.” (internal quotation marks omitted)). Florida Governor Rick Scott stated, “The Boycott, Divestment and Sanction movement is fueled by anti-Semitism, and has no place in Florida or any part of the world that values freedom and democracy. The state of Florida stands firm with our ally Israel and will not support those that participate in this intolerant movement.” Administrator, *supra* (internal quotation marks omitted). Assemblyman Matt Dababneh explained,

California sends a clear message that taxpayer funded state contracts will not go to organizations or companies that engage in discrimination against U.S. Democratic allies, especially Israel. In our business relationships, California must avoid giving the appearance of endorsing organizations that seek to harm our close allies or further discriminatory agendas like the BDS movement, and this bipartisan legislation, AB 1552, sends a strong message that California will not support such discriminatory or anti-Semitic efforts.

Allen, *Bi-Partisan Coalition, supra*.

13. See *Report on Antisemitic Activity in 2015 at U.S. Colleges and Universities with the Largest Jewish Undergraduate Populations*, AMCHA INITIATIVE PROTECTING JEWISH STUDENTS 15, <http://www.amchainitiative.org/wp-content/uploads/2016/03/Antisemitic-Activity-at-U.S.-Colleges-and-Universities-with-Jewish-Populations-2015-Full-Report.pdf> (last visited Oct. 20, 2016) [hereinafter AMCHA INITIATIVE]; see also *Justice Minister: BDS is an Anti-Semitic Movement*, ISR NAT’L NEWS (Mar. 28, 2016), <http://www.israelnationalnews.com/News/Flash.aspx/355363#.Vv18nuIrLIU> [hereinafter Shaked, *BDS Movement*]. Ayelet Shaked, Israel’s Justice Minister, shared that “some of the BDS activists [a]ct out of naïveté and a desire to support human rights. They do not know the facts. But those who know the movement’s founder Omar Barghouti know that the movement acts against the existence of Israel as a Jewish and democratic state.” Shaked, *BDS Movement, supra*.

14. MINIFACTS, *BDS Opposes a 2 State Solution*, YOUTUBE (May 8, 2013), <https://www.youtube.com/watch?v=5oJRriJ2tY8&feature=youtu.be> (showing a video of Omar Barghouti in which Omar expresses his own views and endorses by reference a Palestinian scholar’s prediction of the outcome of BDS) (watch video at 1:09).

15. See *Our Mission*, AIPAC, <http://www.aipac.org/about/mission> (last visited Oct. 20, 2016) [hereinafter AIPAC, *Our Mission*]; see also *How We Work*, AIPAC, <http://www.aipac.org/about/how-we-work> (last visited Oct. 20, 2016). “The mission of AIPAC

Passing state resolutions against BDS is the quickest and most effective way of dealing a deadly blow to this “disease” before it is allowed to metastasize. The movement’s strongest breeding grounds are university campuses, and state legislators carry great weight with the state university faculties and governing boards, which must eradicate BDS from their institutions. *Make no mistake—BDS isn’t just about Israel, it is the new form of politically correct anti-Semitism that has led to intimidation and attacks against [sic] Jewish students nationwide.*¹⁶

The two concepts, antisemitism and anti-Israel, frequently go hand in hand and have become intertwined on many college campuses. In December of 2015, during celebratory pre-Hannukah Jewish holiday festivities, Jews were interrupted by protestors’ anti-Israel chants and blocking of hallways at York University.¹⁷ Fusing the two concepts of antisemitism and anti-Israel, people defaced bathroom doors with swastikas and drew graffiti “413 feet from the UC Berkeley Hillel house,” a place for students to celebrate Jewish holidays, stating, “Death to Israel” and “Kill all the Jews.”¹⁸

Further equating antisemitic hatred for Jews with anti-Israel sentiment, some attempt to justify Palestinian terrorist attacks on *Jews* due to the Palestinian’s disagreement with *Israel’s* actions.¹⁹ Such “justifications” boast,

Young Palestinians do not go out to murder Jews because they are Jews, but because we are their occupiers, their torturers, their jailers, the thieves of their land and water, their exilers, the demolishers of their homes, the blockers of their horizon. Young

is to strengthen, protect and promote the U.S. [and] Israel relationship in ways that enhance the security of the United States and Israel.” AIPAC, *Our Mission, supra*. “AIPAC’s staff . . . educate[s] decision makers about the bonds that unite the United States and Israel and how it is in America’s best interest to help ensure that the Jewish state is safe, strong and secure.” *Id.*

16. Stanley G. Tate, *We Must Protect Israel from Its Lying Enemies*, MIAMI HERALD (Apr. 25, 2016, 6:08 PM) (emphasis added), <http://www.miamiherald.com/opinion/oped/article73832922.html#storylink=cpy>.

17. Shiryn Ghermezian, *Anti-Israel Protest Disrupts York University Hanukkah Party With ‘Harassment, Intimidation’*, ALGEMEINER (Dec. 13, 2015, 12:10 PM), <http://www.algemeiner.com/2015/12/13/york-university-hanukkah-party-disrupted-by-anti-israel-protest/>.

18. Emily Shire, *Berkeley’s Swastika Problem: Are America’s Liberal Colleges Breeding Anti-Semitism?*, DAILY BEAST (Mar. 19, 2015, 5:25 AM), <http://www.thedailybeast.com/articles/2015/03/19/berkeley-s-swastika-problem-are-america-s-liberal-colleges-breeding-anti-semitism.html>.

19. See Amira Hass, *Palestinians Are Fighting for Their Lives; Israel Is Fighting for the Occupation*, HAARETZ (Oct. 07, 2015, 2:12 AM), <http://www.haaretz.com/opinion/premium-1.679129>.

Palestinians, vengeful and desperate, are willing to lose their lives and cause their families great pain because the enemy they face proves every day that its malice has no limits.²⁰

Anti-Israel sentiment has become so intertwined with antisemitism that the two concepts are frequently inseparable, as shown by terrorist attacks targeting Jews to protest against Israel’s policies. The dangerous combination of anti-Israel sentiment and antisemitism has morphed into the BDS movement, which delegitimizes Israel’s right to exist, seeks to cripple Israel’s existence, and reinjects traditional antisemitic rumors into the mainstream media to justify and fuel hatred.

II. SOCIAL MEDIA & NEWS FUELING ANTISEMITISM

Courts cannot adequately address all problems fueled by antisemitic rumors that spiral out of control quickly.²¹ On social media, anything can spread at lightning speed, be deemed credible, and incite violence.²² In response to Facebook calls for imminent violence against Israelis, 20,000 individuals sued Facebook.²³ Resorting to the courts is ineffective because a game of “whack-a-mole”²⁴ ensues: when one website vanishes, dozens more emerge with identical agendas.

In one incident, a Facebook user posted, “I could have annihilated all the Jews in the world, but I left some of them alive so you will know why I was killing them”; yet, an Austrian prosecutor ruled that this antisemitic post was merely a legitimate way to criticize Israel.²⁵ In another incident, an anti-Israel post sparked the following antisemitic comment: “Jews are

20. *Id.*

21. *See infra* notes 25–26 and accompanying text.

22. *See* Mary Papenfuss, *Facebook: Anti-Semitic Messages Earn Mark Zuckerberg Criminal Complaint from German Lawyers*, INT’L BUS. TIMES (Mar. 4, 2016), <http://www.ibtimes.co.uk/lawyers-file-criminal-complaint-against-mark-zuckerberg-anti-semitic-facebook-messages-1547456> (noting German lawyers filed a criminal complaint against Facebook for anti-Semitic hate speech).

23. Yonah Jeremy Bob, *20,000 Israelis Sue Facebook over Incitement to Violence by Palestinians*, JERUSALEM POST (Oct. 26, 2015), <http://www.jpost.com/Arab-Israeli-Conflict/20000-Israelis-sue-Facebook-over-incitement-to-violence-by-Palestinians-430112>.

24. *Whack-a-mole*, OXFORDDICTIONARIES.COM, <http://www.oxforddictionaries.com/us/definition/english/whack-a-mole> (last visited Oct. 21, 2016) (noting that the term “whack-a-mole” is “[u]sed with reference to a situation in which attempts to solve a problem are piecemeal or superficial, resulting only in temporary or minor improvement.”).

25. Benjamin Weinthal, *Austrian Prosecutor: Call to Kill Jews Is Legal Criticism of Israel*, JERUSALEM POST (Feb. 11, 2015) (internal quotation marks omitted), <http://www.jpost.com/Diaspora/Austrian-prosecutor-Call-to-kill-Jews-is-legal-criticism-of-Israel-390760>.

born to create problems, just like they tried to create in Germany. But Hitler cleared all that trash. Likewise same is needed to be done by Palestinians. Eradicate and operate out this Jewish cancer.”²⁶ Many images that were uploaded on social media with the hashtags “#GazaUnderAttack” and “#GazaUnderFire” that purported to depict atrocities Israel committed in Gaza were subsequently confirmed as recycled photos taken years earlier in Syria and Iraq.²⁷

News sources rarely acknowledge that, since 2007, Hamas determines what, if any, of the funds and materials entering Gaza actually makes it to its residents.²⁸ Annually, Hamas invests approximately \$25,000,000 on terrorism.²⁹ Hamas confiscates and prevents United Nations (UN) aid from

26. Aashiq Hussain, FACEBOOK (Aug. 5, 2014, 8:38 AM), <https://www.facebook.com/YvonneRidley1/photos/a.490437592372.267233.96043737372/10152165541202373/?type=3&theater>.

27. See Neil Meads, *#BBCtrending: Are #GazaUnderAttack Images Accurate?*, BBC NEWS (Jul. 8, 2014), <http://www.bbc.com/news/blogs-trending-28198622> (discussing that some of the images of the current situation in Gaza date back to 2009 and other images are from conflicts in Iraq and Syria); Daily Mail Reporter, *Red Faces at the BBC after Reporter Tweets 'Heartbreaking Photo of Child Hurt by Israeli Rocket' Which Is Actually a Girl in Syria*, DAILY MAIL (Nov. 21, 2012), <http://www.dailymail.co.uk/news/article-2236209/BBC-reporter-tweets-photo-injured-Gaza-girl-actually-child-Syria.html> (discussing how the BBC war reporter that tweeted a photograph of an injured girl from Syria, but who stated that the girl was from Gaza, was a “shocking blunder.”); *BBC Admits Blunder: 'Gaza Under Attack' Photos Fabricated*, HEADLINES AND GLOBAL NEWS (July 9, 2014, 12:59 PM) <http://www.hngn.com/articles/35653/20140709/bbc-admits-blunder-gaza-under-attack-photos-fabricated.htm> (“The British Broadcasting Corporation has revealed that photos circulating on social media under the hashtag [#]GazaUnderAttack are not images from the current airstrikes in Gaza.”). See generally Mary Chastain, *Hamas Uses More False Images Against Israel on Social Media*, BREITBART (July 9, 2014), <http://www.breitbart.com/national-security/2014/07/09/more-false-images-hamas-use-on-social-media-against-israel/> (providing a detailed analysis of false photos circulating the internet).

28. See Michael N. Schmitt & John J. Merriam, *The Tyranny of Context: Israeli Targeting Practices in Legal Perspective*, 37 U. PA. J. INT’L L. 53, 59 (2015) (noting that Hamas has retained control of the Gaza Strip since 2007). See generally *Hamas’s Violations of International Law*, LAWFARE PROJECT, http://www.thelawfareproject.org/wp-content/uploads/2014/06/Hamas_Intl_Law.pdf (last visited Oct. 21, 2016) (providing an overview of Hamas’s violations of international law, primarily during the recent war in Gaza); Avi Issacharoff, *In Destitute Gaza, Hamas Rides World’s Goodwill All the Way to the Bank*, TIMES OF ISR. (Mar. 12, 2016, 3:45 PM), <http://www.timesofisrael.com/hamas-and-the-international-silence-on-exploitation-in-gaza/> (providing a discussion on the manner in which Hamas has used taxes and donations to fund its military).

29. Issacharoff, *supra* note 28; see also Dennis Ross, *Hamas Could Have Chosen Peace. Instead, It Made Gaza Suffer.*, WASH. POST (Aug. 8, 2014), https://www.washingtonpost.com/opinions/hamas-could-have-chosen-peace-instead-it-made-gaza-suffer/2014/08/08/eefd2b48-1d83-11e4-82f9-2cd6fa8da5c4_story.html (noting that according to the Israeli army, Hamas diverted an estimated 600,000 tons of cement entering Gaza—meant for construction—in order to build its network of underground tunnels); *Gaza’s*

reaching Gaza’s residents.³⁰ Hamas uses human shields, operates within civilian homes, “prohibits or deters civilians from leaving areas likely to be targeted, and fires rockets from schools, mosques, United Nations facilities, and civilian residences.”³¹

While the media underemphasizes Hamas’ role in Gaza, it frequently distorts headlines covering terrorist attacks on Israelis. A *New York Times* headline stated, “Israeli Police Officers Kill Two Palestinian Men.”³² That headline infers to a reasonable cursory reader that Israeli officers maliciously targeted and killed in cold blood two innocent Palestinian bystanders. The *real* story: one Palestinian carrying a knife “ran toward” an Israeli officer attempting to stab the officer, and the other Palestinian successfully stabbed an officer “in the head and chest.”³³ In response to the stabbing attacks and in self-defense, the Israeli officers in the vicinity subsequently shot the terrorists.³⁴

France’s Prime Minister Valls equated antisemitism with anti-Israel sentiment, stating, “‘Anti-semitism, this old European disease’ . . . has taken ‘a new form. It spreads on the Internet, in our popular neighborhoods, with a youth that has lost its points of reference, has no

Terror Economy: Imagine How Much It Costs to Build Those Tunnels and Buy Rockets., WALL STREET J., <http://www.wsj.com/articles/gazas-terror-economy-1406327783> (last updated July 27, 2014, 10:17 AM) (“Hamas devotes its scarce resources to building a terror economy of tunnels and rockets and sending its young men to die in suicide raids.”).

30. See, e.g., Isabel Kershner & Taghreed El-Khodary, *UN Says Hamas Stole Aid Intended for Gazans*, N.Y. TIMES (Feb. 4, 2009), <http://www.nytimes.com/2009/02/04/world/africa/04iht-mideast.4.19933553.html> (noting that the “[Hamas] police confiscated about 3,500 blankets and more than 400 food parcels meant to help hundreds of families in the Gaza City Beach Camp.”); see also Regina Goff, Comment, *The Legality of Israel’s Blockade of Gaza*, 8 REGENT J. INT’L L. 83, 104 (2011) (discussing the United Nations Relief and Works Agency’s suspension of aid into Gaza due to Hamas’s repeated confiscation of aid to Gazans); *UNRWA Suspends Imports into Gaza Following Aid Confiscation*, UNITED NATIONS RELIEF AND WORKS AGENCY (Feb. 6, 2009) <http://www.unrwa.org/newsroom/press-releases/unrwa-suspends-imports-gaza-following-aid-confiscation?id=493> (noting that ten truckloads of UNRWA’s flour and rice were taken by the Ministry of Social Affairs in Gaza).

31. Schmitt & Merriam, *supra* note 28 at 69.

32. Daa Hadid, *Israeli Police Officers Kill Two Palestinian Men*, N.Y. TIMES (Apr. 25, 2015), http://www.nytimes.com/2015/04/26/world/middleeast/palestinian-is-killed-by-forces-of-israel.html?_r=2.

33. *Id.*

34. *Id.* See generally Ian Tuttle, *The Media’s Shameful, Shameless Bias Against Israel*, NAT’L REV. (Oct. 15, 2015, 3:37 PM), <http://www.nationalreview.com/article/425651/medias-shameful-naked-bias-against-israel-ian-tuttle> (providing a detailed examination of media bias against Israel, and specifically regarding the deaths of the two Palestinian men that Israeli police were forced to shoot and kill).

conscience of history, and who hides itself behind a fake anti-Zionism.”³⁵ Combining both antisemitism and anti-Israel into the same monster, social media posts circulate dangerous rumors that Israel and the Jews own the media.³⁶ Harvard Law Professor Alan Dershowitz has explained,

Yes, there are many individual Jews in positions of influence in Hollywood, in network television, in sports and entertainment, and in many other areas of American public life. These individuals, who happen to be Jewish, do not act together in any kind of conspiratorial manner. There is no “Jewish control” of any of these areas — or of the many other areas, such as medicine, law, academia, finance — where there are large numbers of individual Jews in high positions. . . .

. . . .

. . . So let’s stop all this nonsense about Jewish control over the media and praise those individual Jews who, by dint of hard work and talent, have earned their place, as individuals, in so many areas of American life. I always thought that was the American dream.³⁷

In response to Stanford allowing for similar antisemitic rumors to circulate and go unaddressed, a Stanford alumni stated:

People who have faced death for the crime of being Jewish will be more than happy to tell you that “Jews run the world” is the oldest trick in the book. It predates the rise of Hitler. It predates the Protocols of the Elders of Zion. As long as Jews have been minorities in the world around them, they have been dealing with this garbage.³⁸

The Wall Street Journal reported a study that exposed the harsh truth of antisemitism permeating social media.³⁹ The individuals conducting the

35. Marc Weitzmann, *French Prime Minister Denounces Anti-Zionism as Anti-Semitism*, TABLET (July 23, 2014, 9:45 AM), <http://www.tabletmag.com/scroll/180104/french-prime-minister-denounces-anti-zionism-as-anti-semitism>.

36. See Freedom Research, *The Jewish Hand Behind Internet*, RADIO ISLAM (June 2009), https://radioislam.org/islam/english/jewishp/internet/jews_behind_internet.htm (“In the following document we will give an insight into the Jewish penetration of the Internet and also show the level of cooperation between leading Jewish Internet entrepreneurs and the racist Jewish *Apartheid* state of Israel.”); see also *Jewish Control of the Internet: Facebook, Google, YouTube et al.*, SOC. & HUMAN RIGHTS ISSUES (Mar. 26, 2011), <https://ronabbass.wordpress.com/2011/03/26/jewish-control-of-the-internet-facebook-google-youtube-et-al/> (“It is NOT anti-Semitic to point out that the Jewish control over the internet is all pervasive.”).

37. Alan Dershowitz, *Do Jews Control the Media?*, HUFFINGTON POST: THE BLOG (Oct. 6, 2010, 5:33 PM), http://www.huffingtonpost.com/alan-dershowitz/do-jews-control-the-media_b_753227.html.

38. Winston Shi, *On Gabriel Knight and What Anti-Semitism Really Means*, STAN. DAILY (Apr. 7, 2016), <http://www.stanforddaily.com/2016/04/07/on-gabriel-knight-and-what-anti-semitism-really-means/>.

39. See Amanda Botfeld, *Facebook and Israel: What’s Not to ‘Like’? Lots, It Seems*, WALL

study created two Facebook pages: one Facebook page was anti-Israel and the other Facebook page was anti-Palestine.⁴⁰ Both Facebook pages had nearly identical content displayed calling for the destruction of either Israel or Palestine.⁴¹ Both Facebook pages were reported at the same time by the individuals conducting the study to Facebook.⁴² Facebook's different reactions to the reporting of both Facebook pages revealed just how much antisemitism has permeated social media's "community standards" of what is and is not discriminatory and dangerous. Facebook decided to only shut down the Facebook page that was anti-Palestine and not the Facebook page that was anti-Israel.⁴³ Instead of shutting down the anti-Israel Facebook page, Facebook curtly stated that it was "not in violation of Facebook's rules"; yet, the same type of remarks on the anti-Palestine page were worthy of shutting the page down within twenty-four (24) hours for "containing [a] credible threat of violence" that violated community standards.⁴⁴ This experiment sheds light on the troubling double standard fueled by antisemitism that courts cannot adequately address.

Additionally, this lopsided social media policing occurs on Instagram. In one incident, a woman posted a photo of herself in front of an Israeli flag and Instagram took down her photo for "violating community standards."⁴⁵ The author of the post was shocked to find out that the post was removed because of the Israeli flag in the background.⁴⁶ She shared,

Initially I was extremely upset because I consider the Israeli flag very much a part of my identity as a Jewish Zionist woman. Also, I have reported actual terrorist activity on Instagram . . . Actual graphic violence and nudity and I get a message back saying my post was reviewed and it doesn't violate the community standards. So I was in disbelief that my photo violated anything⁴⁷

Once the Anti-Defamation League⁴⁸ got involved, Instagram allowed the photo to be reposted days later.⁴⁹

STREET J., <http://www.wsj.com/articles/facebook-and-israel-whats-not-to-like-lots-it-seems-1452641834> (last updated Jan. 13, 2016, 9:48 AM).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. Lisa Daftari, *Exclusive: Following Complaint, Instagram Restores Israeli Flag Photo That "Violated Community Standards"*, FOREIGN DESK (Apr. 19, 2016, 6:00 PM), <http://www.foreigndesknews.com/breaking-news/instagram-restores-israeli-flag-post/>.

46. *Id.*

47. *Id.*

48. See *About the Anti-Defamation League*, ANTI-DEFAMATION LEAGUE,

III. COMBATTING BDS: EDUCATION & ANTI-BDS LEGISLATION

Building on the media's distortions, anti-Israel events which frequently call for BDS boycotts of Israel spread "hateful accusations against Israel, falsely claiming that Israel is guilty of apartheid, ethnic cleansing, genocide, and a number of other war crimes in an effort to demonize Israel by portraying it as the embodiment of the world's true evils."⁵⁰ Additionally, "[t]hese claims are rarely, if ever, balanced with an acknowledgement of Palestinian terrorism against Israeli civilians, [and] Israel's continual efforts to make peace with the Palestinians."⁵¹ As such, the BDS movement is best combatted through anti-BDS legislation and education to combat the BDS movement's hateful and inaccurate accusations against Israel.

BDS harms the legitimate interests of the general public, businesses, and America's longstanding ally: Israel.⁵² "Israel produces more scientific papers per capita than any other nation and has the highest number of scientists and engineers per capita than any other country in the world."⁵³

<http://www.adl.org/about-adl/> (last visited Oct. 21, 2016). "The Anti-Defamation League was founded in 1913 'to stop the defamation of the Jewish people and to secure justice and fair treatment to all.' Now the nation's premier civil rights/human relations agency, ADL fights anti-Semitism and all forms of bigotry, defends democratic ideals and protects civil rights for all." *About the Anti-Defamation League, supra*.

49. Daftari, *supra* note 45.

50. *Anti-Israel Activity on Campus After Operation Protective Edge*, ANTI-DEFAMATION LEAGUE (Oct. 24, 2014), <http://www.adl.org/israel-international/anti-israel-activity/c/campus-anti-israel-activity-2014-2015.html#.Vum16OIrLIU> (noting that the number of anti-Israel events scheduled to take place on U.S. campuses in the 2014–2015 school year is totaling more than ninety, which is already double the events scheduled in the same period last year); see AMCHA INITIATIVE, *supra* note 13, at 16 (noting that over 150 anti-Israel rallies and social media posts delegitimized or demonized Israel with rationale grounded in classic anti-Semitic notions of Jewish evil and power).

51. *Anti-Israel Activity on Campus After Operation Protective Edge, supra* note 50; see also Daniel Gordis, *Rejecting Zionist Principles Is a Rejection of Jews*, N.Y. TIMES, <http://www.nytimes.com/roomfordebate/2016/04/04/is-anti-zionism-anti-semitism/rejecting-zionist-principles-is-a-rejection-of-jews> (last updated Apr. 4, 2016, 10:18 AM) (discussing the "lopsidedness and relentlessness of critique" on Israel which is "fueled by a fundamental rejection of the idea of a Jewish State.").

52. See Michael Eisenstadt & David Pollock, *Friends with Benefits: Why the U.S.-Israeli Alliance Is Good for America*, WASH. INST. (Nov. 7, 2012), <http://www.washingtoninstitute.org/policy-analysis/view/friends-with-benefits-why-the-u.s.-israeli-alliance-is-good-for-america> (explaining how the United States' leaders view Israel); see also Lamont Colucci, *An Ally Like No Other*, U.S. NEWS & WORLD REP. (Nov. 13, 2014, 5:30 PM), <http://www.usnews.com/opinion/blogs/world-report/2014/11/13/israel-is-the-middle-east-ally-the-us-cannot-lose> (explaining why Israel is an important ally to keep).

53. *Great Israeli Inventions*, INVENTIONS HANDBOOK, <http://www.inventions->

“One in four life science innovations has Israeli roots”⁵⁴ BDS seeks to cripple brands affiliated with Israel or that are Israeli invented, yet Israel is at the forefront of technological and medical innovation.⁵⁵ BDS’s boycott list includes the following companies: Nestle, Motorola, Hewlett-Packard, Starbucks, CocaCola, Sodastream,⁵⁶ Revlon, Victoria’s Secret, and Proctor & Gamble.⁵⁷ Even Disney was boycotted because Epcot’s exhibit acknowledged Jerusalem is Israel’s capital.⁵⁸ In 2006, Bill Gates himself noted “that the ‘innovation going on in Israel is critical to the future of the

handbook.com/israeli-inventions.html (last visited Oct. 21, 2016).

54. David Shamah, *One in Four Life Science Innovations Has Israeli Roots, Says Expert*, TIMES OF ISR. (Mar. 10, 2016, 6:02 PM), <http://www.timesofisrael.com/one-in-four-life-science-innovations-has-israeli-roots-says-expert/>.

55. See Einat Paz-Frankel, *Meet The Winners: The Coolest Israeli Startups and Innovations of 2015*, NOCAMELS (Dec. 30, 2015), <http://nocamels.com/2015/12/coolest-israeli-startups-innovations-2015/> (“62 Israeli startup companies were sold for a whopping \$7.2 billion in 2015”). See generally Marcella Rosen, *65 Years of Innovation, from Rummikub to the ‘God Particle’*, TIMES OF ISR. (Apr. 15, 2013, 5:24 AM), <http://www.timesofisrael.com/65-years-of-innovation-from-rummikub-to-the-god-particle/> (listing several Israeli inventions, including Rummikub, baby monitors, computer processors, amniocentesis, and the Uzi machine gun); Abigail Klein Leichman, *Israel’s Top 45 Greatest Inventions of All Time*, ISRAEL21C (Sept. 26, 2011, 12:00 AM), <http://www.israel21c.org/israels-top-45-greatest-inventions-of-all-time-2/> (listing the greatest inventions the Israeli people have created); *Waze – a Brilliant Israeli Invention*, EYE2ISRAEL, <http://www.israel1.org/waze-a-brilliant-israeli-invention/> (last visited Oct. 3, 2016) (describing another Israeli invention: the Waze application for smart phones). See generally Abigail Klein Leichman, *12 Top Ways Israel Feeds the World*, ISRAEL21C (May 10, 2012, 12:50 AM), <http://www.israel21c.org/the-top-12-ways-israel-feeds-the-world/> (describing Israel’s agricultural innovations).

56. See Ryan Jones, *Scarlett Johansson is Israel’s Unexpected Heroine*, ISR. TODAY (Jan. 26, 2014), <http://www.israeltoday.co.il/NewsItem/tabid/178/nid/24392/Default.aspx> (describing how Sodastream provided jobs for everyone and workers indicated that they were treated equally).

“Everyone is treated the same here. The privilege that the Israeli worker gets, the Palestinian also gets,” said [Palestinian worker] Rani Abed Rabbo, who was offered a management position by SodaStream after losing his job in the hi-tech sector. “There is no discrimination here. We eat together, we laugh together. We feel welcome here.”

Jones, *supra*.

57. See generally *Boycott Israel Products*, BOYCOTT ISR. TODAY, <https://boycottisraeltoday.wordpress.com/boycott-israel/> (last visited Oct. 24, 2016) (naming various companies that are allies with the Israeli people); Christa Case Bryant, *10 Brands You’ll Have to Give Up If You’re Boycotting Israel*, THE CHRISTIAN SCI. MONITOR (Jan. 30, 2014), <http://www.csmonitor.com/World/2014/0130/10-brands-you-ll-have-to-give-up-if-you-re-boycotting-Israel/> (listing the various companies that are pro-Israel).

58. *BOYCOTT ISRAEL PRODUCTS*, *supra* note 57; see also Richard Verrier, *Israeli Exhibit Embroils Disney in Controversy*, ORLANDO SENTINEL 1–2 (Sept. 19, 1999) (internal quotation marks omitted), http://articles.orlandosentinel.com/1999-09-19/news/9909190019_1_walt-disney-capital-of-israel-jerusalem (explaining why the United Arab Emirates Information and Culture Minister stated, “We can do a lot of damage to [Disney’s] business.”).

technology business.”⁵⁹

In support of anti-BDS legislation, California Assemblyman Travis Allen shared, “[i]t’s my conviction that any company that is intentionally inflicting economic harm on the state of Israel is not economically aligned with the values of California’s residents and is undeserving of California’s financial investments.”⁶⁰ Echoing Assemblyman Allen’s sentiment, Alabama House Speaker Victor Gaston stated,

I am proud to have had a role in the House Rules Committee assisting with the now unanimous passing of this important Resolution. The Boycott, Divestment, and Sanctions movement has no place in the State of Alabama as it harms the United States’ greatest ally and friend to Alabama, Israel.⁶¹

Florida Governor Rick Scott explained,

For many generations, Florida and Israel have been close partners and allies. When I was first elected, I led a trade mission to Israel because it is imperative that we further our economic growth between Florida and Israel. . . .

. . . .

. . . This bill ensures the State of Florida will not support those that participate in campaigns fueled by intolerance and anti-Semitism — like the Boycott, Divestment and Sanctions (BDS) movement.⁶²

Antisemitism and its extensions—including BDS—must be addressed with education and remedial legislation. As a Stanford alumnus noted,

We have to be anti-racist because *it is the right thing to do*. Because this is our university, and as long as Stanford means something to us, we have to do our part to make sure it embodies the very best of American academic life. Is this really what we want our home to be? A place where it’s OK to make anti-Semitic arguments? A place where it’s OK to turn the clock back to 1903?⁶³

A common misguided “reason” for BDS is that Israel is an apartheid state. Apartheid, “separate development,” occurred in South Africa when laws

59. Eisenstadt & Pollock, *supra* note 52.

60. Allen, *Boycott the Boycotters*, *supra* note 12.

61. *Alabama Legislature Unanimously Condemns Anti-Israel BDS Movement*, SOUTHERN JEWISH LIFE (Feb. 17, 2016), <http://www.sjlmag.com/2016/02/alabama-legislature-unanimously.html>.

62. Randall P. Lieberman, *Scott Ceremonially Signs Anti-BDS Bill*, SUN SENTINEL (Apr. 7, 2016, 4:28 PM), <http://www.sun-sentinel.com/florida-jewish-journal/news/palm/fl-jjps-governorscottsb86-0413-20160407-story.html>.

63. Shi, *supra* note 38.

prevented equal citizenship rights.⁶⁴ Yet, "Miss Israel," an *Ethiopian immigrant*, shared, "Israel really accepts everybody."⁶⁵ Israel is not an apartheid state.⁶⁶ Kenneth Rasalabe Joseph Meshoe, a South African member of Parliament and President of the African Christian Democratic Party, stated, "[t]hose who know what real apartheid is, as I know, know that there is nothing in Israel that looks like apartheid. . . . ([T]he) BDS movement is not a democratic movement; they are a movement of intimidation, a movement that performs hatred."⁶⁷

Approximately twenty percent (20%) of Israel's citizens are Arabs.⁶⁸ Arab unions form the third largest political party holding seats in Israel's legislature.⁶⁹ Arab Israeli citizens "enjoy the full range of civil and

64. See *Response to Common Inaccuracy: Israel Is an Apartheid State*, ANTI-DEFAMATION LEAGUE, <http://www.adl.org/israel-international/israel-middle-east/content/AG/inaccuracy-israel-apartheid-state.html> (last visited Oct. 24, 2016) [hereinafter *Response to Common Inaccuracy*].

65. JTA, *First Black Miss Israel Titi Aynaw Reflects Growing Diversity of Jewish State*, FORWARD (Mar. 28, 2013) (internal quotation marks omitted), <http://forward.com/news/173939/first-black-miss-israel-titi-aynaw-reflects-growin/>; see Rabbi Evan Moffic, *Anti-Semitism at My Alma Mater*, HUFFINGTON POST: THE BLOG (May 13, 2015, 5:34 PM), http://www.huffingtonpost.com/rabbi-evan-moffic/antisemitism-at-my-almam_b_7264540.html ("Israel . . . welcomes immigrants of all faiths. Hundreds of refugees from violence in Africa have come to Israel, as have refugees from Asia. Arabs also make up nearly twenty percent to the country's citizens.").

66. See *Declaration of Establishment of State of Israel*, ISR. MINISTRY OF FOREIGN AFF., <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx> (last visited Oct. 26, 2016); *Response to Common Inaccuracy*, *supra* note 64; Richard J. Goldstone, *Israel and the Apartheid Slander*, N.Y. TIMES (Oct. 31, 2011), http://www.nytimes.com/2011/11/01/opinion/israel-and-the-apartheid-slander.html?_r=0 (explaining how Israel is not an apartheid state from the perspective of the former justice of the South African Constitutional Court during the apartheid era). The Declaration of Establishment of the State of Israel states,

[The State of Israel] will ensure complete equality of social and political rights to all [of Israel's] inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture

. . . .

. . . WE APPEAL - in the very midst of the onslaught launched against us now for months - to the Arab inhabitants of the State of Israel to preserve peace and participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions.

Declaration of Establishment of State of Israel, supra.

67. JPost.com Staff, *I Know What Apartheid Was, and Israel Is Not Apartheid, Says S. African Parliament Member*, JERUSALEM POST (Aug. 25, 2015) (internal quotation marks omitted), <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/I-know-what-apartheid-was-and-Israel-is-not-apartheid-says-S-African-parliament-member-413101>.

68. *Arabs of Israel*, ISRAEL.COM, <http://israel.com/home/lifestyle/real-stories/israeli-arab/> (last visited Oct. 24, 2016).

69. *Id.*

political rights . . . the right to organize politically . . . vote and . . . speak and publish freely.”⁷⁰ They “serve as members of Israel’s security forces, are elected to parliament and appointed to the country’s highest courts.”⁷¹ Jerusalem’s Hadassah Hospital treats terrorists and terror victims.⁷²

Stanley Tate, a champion of Florida’s Prepaid College program, wrote an op-ed to the Miami Herald in April of 2016 highlighting the antisemitic lies that are being spread to hurt Israel. Tate explained,

[I]t seems that some people don’t like successful Jews, so a new movement has arisen to destroy the Jewish state and undermine the U.S. economy. This group does not believe in using guns or tanks, but rather disinformation. Their battlegrounds are not on the streets of Jerusalem or Tel Aviv, but rather on the hearts and minds of young impressionable Americans, especially those on university campuses.

. . . They seek to boycott, divest and sanction (BDS) the Jewish state into submission by selling a pack of lies to a generation of uneducated youth.⁷³

70. *Response to Common Inaccuracy*, *supra* note 64.

71. *Id.*; see Shlomi Eldar, *Arab Women’s New Face in the Knesset*, ALMONITOR (Mar. 26, 2015), <http://www.al-monitor.com/pulse/ru/contents/articles/originals/2015/03/aida-touma-sliman-interview-arab-woman-future-arab-knesset.html#> (noting that an Arab Israeli female was elected to Knesset, the Israeli legislature).

72. See William Booth & Ruth Eglash, *Meet the Jewish Doctor Who Saves Palestinian Attackers and the Muslim Doctor Who Saves Jewish Victims*, WASH. POST (Oct. 26, 2015), https://www.washingtonpost.com/world/middle_east/doctors—isaraeli-and-palestinian—work-together-to-heal-wounds-of-war/2015/10/25/b8f62240-78c5-11e5-a5e2-40d6b2ad18dd_story.html (explaining that when it comes to treating patients, the two doctors treat every patient equally); Reuters, *Jerusalem Doctors Treat Terrorists and Victims Alike, Identities Unknown*, JERUSALEM POST (Nov. 3, 2015), <http://www.jpost.com/Arab-Israeli-Conflict/Jerusalem-doctors-treat-terrorists-and-victims-alike-without-knowing-identities-431904> (explaining that the Jerusalem hospital treats both Arabs and Jews); Yifat Erlich, *A Fragile Coexistence at Jerusalem’s Hadassah Hospital*, YNETNEWS.COM (Oct. 20, 2015), <http://www.ynetnews.com/articles/0,7340,L-4712411,00.html> (highlighting that Hadassah Hospital serves all patients, regardless of citizenship or the reason for needing treatment, despite the tensions within Israel). A Hadassah Hospital doctor shared, “[w]e don’t ask who you are. We treat the terrorist the same as we treat the victim.” Booth & Eglash, *supra* (internal quotation marks omitted). An Israeli Arab doctor at Hadassah Hospital stated,

I am an Israeli Arab, this is my country, I feel the same as Yochi (Doctor Schiffman) feels. It’s my country and I’m doing my job . . . I don’t wake up in the morning and start thinking ‘I’m an Arab not a Jew’ and such things, I am focused on patient treatment, that’s all . . .

Reuters, *supra*. Another doctor at the same hospital added, “at least at the hospital there is a different atmosphere. We work together, we provide treatment to all patients, no matter their religion or race, whether they’re rich or poor, Israeli or not.” Erlich, *supra* (internal quotation marks omitted).

73. Tate, *supra* note 16 (emphasis added).

One of the false statements that BDS spreads to support the misstatement that Israel is an apartheid state is that Israel has "Jewish only" roads.⁷⁴ This is an entirely false statement. Israel has roads that only Israelis can drive on, but "Israelis" includes both Arabs and Jews. "Approximately [twenty percent] 20% of Israel[i] citizens are Arabs"⁷⁵

Although courts cannot adequately address all problems stemming from antisemitism, anti-BDS legislation is a wise and constitutional alternative. In March of 2016, Florida passed anti-BDS legislation with almost unanimous bi-partisan support, pledging not to contract with businesses engaging in BDS.⁷⁶ Anti-BDS legislation is constitutional.⁷⁷ "[A] legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right."⁷⁸

Anti-BDS legislation doesn't prohibit speech, beliefs, or boycott rights.⁷⁹ Businesses can display a "We Hate Israel" banner and not fall

74. See "Jewish Only Road" Falsehood Corrected, CAMERA (Jan. 5, 2010), http://www.camera.org/index.asp?x_context=2&x_outlet=2&x_article=1783; *Washington Post* Also Corrects "Jewish-Only Roads" Falsehood, CAMERA (Jan. 28, 2010), http://www.camera.org/index.asp?x_context=2&x_outlet=38&x_article=1791; Tamar Sternthal, *Ha'aretz* Repeats 'Jewish-Only Apartheid Roads' Canard, CAMERA (Aug. 29, 2010), http://www.camera.org/index.asp?x_context=2&x_outlet=55&x_article=1914; Michael J. Totten, *The Myth of Jewish-Only Roads*, COMMENTARY (Dec. 5, 2010), <https://www.commentarymagazine.com/culture-civilization/religion/judaism/the-myth-of-jewish-only-roads/>; Hillel Fendel, *CAMERA Calls Out NYTimes for Anti-Israel Online Debate*, ARUTZ SHEVA 7 (June 4, 2016), <http://www.israelnationalnews.com/News/News.aspx/210424#.VwT0luIrLIV> (dispelling the misleading notion that Israel has 50 discriminatory laws because such a statement is a "'patently false claim' and a 'propaganda talking point that no responsible media outlet should repeat.'").

75. Stand for Israel, *Ethnic Groups*, INT'L FELLOWSHIP OF CHRISTIANS & JEWS, http://fellowship.ifcj.org/site/PageNavigator/sfi_about_culture_ethnicities_arabs (last visited Oct. 24, 2016); see *Arabs of Israel*, *supra* note 68.

76. See generally Sergio Carmona, *Florida Legislature Passes Anti-BDS Bill*, SUN SENTINEL (Mar. 7, 2016, 3:40 PM), <http://www.sun-sentinel.com/florida-jewish-journal/news/miami-dade/fl-jjdc-legislation-0309-20160307-story.html> (explaining the effects of the new anti-BDS legislation in Florida and discussing the arguments for and against the new bill).

77. See *Rust v. Sullivan*, 500 U.S. 173, 193 (1991).

The Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other.

Id.

78. *Id.* (internal quotation marks omitted) (quoting *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983)).

79. See Marc A. Greendorfer, *The Inapplicability of First Amendment Protections to BDS Movement Boycotts*, CARDOZO L. REV. DE NOVO *112, *116–17 (2016) (noting that the

within the statute.⁸⁰ It bans conduct, like similar federal anti-boycott statutes that are held to be constitutional.⁸¹

States can define the terms by which they spend funds and can refuse to subsidize discriminatory conduct.⁸² The Supreme Court has opined,

The Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other. “[A] legislature’s decision not to subsidize the exercise of a fundamental right does not infringe the right.”⁸³

Northwestern University Constitutional Law Professor Eugene Kontorovich explained,

Claiborne Court’s holding that boycotts are protected is inapplicable to BDS conduct and anti-BDS legislation does not run afoul of the First Amendment); *see also* Holder v. Humanitarian Law Project, 561 U.S. 1, *7, *25–39, *39–40 (2010) (upholding a federal statute that criminalized knowingly providing support or materials to foreign terrorist organizations and noting that the statute did not prohibit freedom of association nor freedom of speech); *The Illegality of BDS in New York State: Response to Frivolous Arguments of Palestine Legal and the Center for Constitutional Rights*, LAW FARE PROJECT 1, 3 (Feb. 2, 2016), http://thelawfareproject.org/wp-content/uploads/2016/02/Illegality_of_BDS_NYS.pdf (“*Claiborne* cannot reasonably be read to stand for the proposition that *any* statutory regulation of boycott activity is tantamount to a complete prohibition or, put another way, that *any* regulation of boycott activity is constitutionally impermissible. Again, reliance on *Claiborne* in the context of BDS is wholly inappropriate.”).

80. *See* Eugene Kontorovich, *Can States Fund BDS?*, TABLET (July 13, 2015, 12:00 AM), <http://www.tabletmag.com/jewish-news-and-politics/192110/can-states-fund-bds> (“A business could call for a boycott of Israel organize rallies to this effect—and not be affected by this legislation. The current laws do not deal with consumer boycotts at all, but with boycotts by businesses, which are far more conduct than expression.”).

81. *See* *Karen Maritime Ltd. v. Omar Int’l Inc.*, 322 F. Supp. 2d 224, 227 (E.D.N.Y. 2004) (internal quotation marks and citations omitted) (opining that a federal anti-boycott statute is constitutional and noting that it “was intended to stop the secondary and tertiary boycotts that Congress considered detrimental to both the United States and Israel.”); 50 U.S.C.A. § 4602(5)(A) (West 2015) (“It is the policy of the United States . . . to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person”); *see also* *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 551 (1983) (“The issue in this case is not whether TWR must be permitted to lobby, but whether Congress is required to provide it with public money with which to lobby. For the reasons stated above, we hold that it is not.”).

82. *See* *Reeves, Inc. v. Stake*, 447 U.S. 429, 437 n.10 (1980) (“States may fairly claim some measure of a sovereign interest in retaining freedom to decide how, with whom, and for whose benefit to deal.”).

83. *Rust*, 500 U.S. at 193 (emphasis added) (quoting *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983)).

[G]overnments can, without any constitutional question, attach conditions relevant to the actual expenditure of funds. A state can reasonably decide that a company that boycotts Israel puts politics ahead of business considerations in a way that makes the company less effective and harms contract performance: For example, a company may fail to use the best subcontractors, products, or partners because of their national origin and thus simply do a worse job. Such a determination is well within the legitimate scope of legislative judgment.⁸⁴

Additionally, refusing to subsidize discriminatory conduct such as BDS is not a “penalty” under a constitutional analysis, because there is no constitutional right to such state funds in the first place. “[R]efusal to fund protected activity, without more, cannot be equated with the imposition of a ‘penalty’ on that activity.”⁸⁵ The Supreme Court has opined, “[w]e have held in several contexts that a legislature’s decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny.”⁸⁶ Moreover, the Supreme Court has noted, “Congress has wide latitude to attach conditions to the receipt of federal assistance . . . to further its policy objectives.”⁸⁷

Individuals do not have a First Amendment right, nor any constitutional right, to force states to spend taxpayer funds to contract with them. Democratic Senator Felder stated, “[t]he [anti-BDS] legislation doesn’t prevent anyone from speaking or promoting a boycott, nor from making other vile and prejudicial statements. . . . That’s a person’s constitutional right. But they don’t have a constitutional right to be a New York State contractor.”⁸⁸ There are beliefs that are protected by the First Amendment that the states can nonetheless choose not to fund with taxpayer dollars. For example, the First Amendment protects a person’s right to believe that homosexuality is evil.⁸⁹ The First Amendment protects a person’s decision to “boycott” homosexuals.⁹⁰ However, as President

84. Kontorovich, *supra* note 80.

85. *Harris v. McRae*, 448 U.S. 297, 316 n.19 (1980).

86. *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983).

87. *United States v. American Library Ass’n, Inc.*, 539 U.S. 194, 203 (2003).

88. Ron Kampeas, *Anti-BDS Laws Gain Momentum Across United States, but Some Say They Go Too Far*, HERITAGE FLA. JEWISH NEWS (Mar. 4, 2016) (internal quotation marks omitted), <http://www.heritagefl.com/story/2016/03/04/news/anti-bds-laws-gain-momentum-across-united-states-but-some-say-they-go-too-far/5848.html>.

89. See Hunter Baker, *Gay Marriage Is Here – Now What?*, FEDERALIST (June 27, 2015), <http://thefederalist.com/2015/06/27/gay-marriage-is-here-now-what/> (“[R]eligions . . . may . . . advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned.”).

90. See *id.*

Obama explained when signing the executive order banning such discrimination in government contracts, “America’s federal contracts should not subsidize discrimination.”⁹¹ Congress enjoys wide discretion when setting spending priorities, which can affect some forms of expression, and the decision to not fund an activity is constitutional.⁹²

Northwestern University Professor Kontorovich explained that anti-BDS legislation is constitutional in the following manner:

The federal government has long used restrictions on contractors as a way to promote various social values. Thus contractors have been required to abstain from a variety of otherwise legal activities, like not practicing affirmative action. And state pension funds have long engaged in “socially conscious” investing, avoiding investing in companies on the basis of their environmental, employment or labor practices.⁹³

BDS conduct is not communicative content and is not entitled to First Amendment protection.⁹⁴ Professor Kontorovich contends that the message of BDS is not in speech or communicative content, but instead requires explanation, which is not cloaked with First Amendment protection. Professor Kontorovich explained,

Even with Israel boycotts, the act of boycotting itself does not explain its motives, or express any political viewpoint. Companies may boycott Israel to prevent further harassment from the BDS movement; to curry favor with Arab states; or out of mere anti-Semitism; or to protest particular policies of Israel’s. Unless the company explains, its action has no message. That is why the action is not speech, only the explanation.⁹⁵

91. Justin Sink, *Obama Bans Contractors from Discriminating Against LGBT People*, HILL (July 21, 2014, 11:06 AM) (internal quotation marks omitted), <http://thehill.com/homenews/administration/212822-obama-signs-order-banning-lgbt-discrimination-by-contractors>; see Merrit Kennedy, *N.Y. Restricts Public-Employee Travel to North Carolina over LGBT Law*, NPR.ORG (Mar. 29, 2016, 2:42 PM), <http://www.npr.org/sections/thetwo-way/2016/03/29/472268519/n-y-governor-bans-most-state-travel-to-north-carolina-over-lgbt-law> (stating New York has banned taxpayer-funded travel to states that passed anti-LGBTQ legislation like North Carolina).

92. See *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 573 (1998).

93. *Anti-Israel Groups Team Up to Attack Florida’s Anti-Boycott Legislation*, TOWER (Jan. 29, 2016, 4:35 PM) (emphasis omitted), <http://www.thetower.org/2885-coalition-of-anti-semitic-groups-team-up-to-oppose-floridas-anti-bds-legislation/>.

94. See *Briggs & Stratton Corp. v. Baldrige*, 728 F.2d 915, 917 (7th Cir. 1984) (upholding a federal anti-boycott law while explaining the difference between protected communication of views on the Arab boycott of Israel versus conduct, which is not protected).

95. Kontorovich, *supra* note 80.

However, even if BDS conduct is considered expressive, it certainly is not immune from remedial legislation.⁹⁶ "[F]reedom of association . . . plainly presupposes a freedom not to associate."⁹⁷ When "expressive activities . . . produce special harms distinct from their communicative impact [they] are entitled to no constitutional protection."⁹⁸ Alternatively, when contracting, states are market participants and can refuse to subsidize entities without First Amendment infringement.⁹⁹

96. *Runyon v. McCrary*, 427 U.S. 160, 176 (1976) ("[W]hile '[invidious] private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment . . . it has never been accorded affirmative constitutional protections. And even some private discrimination is subject to special remedial legislation in certain circumstances'); see *Greendorfer*, *supra* note 79, at *128 ("[E]ngaging in activities like the promotion of foreign boycotts that interfere with government policy and the free functioning of commercial markets is not protected by the First Amendment."); *Kennedy*, *supra* note 91 (highlighting that New York's executive order bans "all taxpayer-funded trips to North Carolina, unless they're essential to public health or law enforcement" in reaction to North Carolina passing anti-LGBTQ laws); Nico Lang, *Vermont and Washington Are Latest States to Ban Travel to North Carolina*, *ADVOC.* (Mar. 30, 2016, 9:30 AM), <http://www.advocate.com/religion/2016/3/30/vermont-and-washington-latest-states-ban-travel-north-carolina> (explaining that Washington and Vermont halt expenditure of state funds on official state travel to North Carolina due to North Carolina's controversial anti-LGBTQ legislation).

97. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000) (internal quotation marks omitted) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984)); see *Greendorfer*, *supra* note 79, at *123 ("While the First Amendment generally protects the right to engage in a wide variety of protest activities, as the *Claiborne and Longshoremen* courts explained generally, and other cases have held specifically, the First Amendment is not absolute." (internal footnote omitted)).

98. *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984) (citations omitted) (noting that conduct is not cloaked in protection by having a speech component); *Nat'l Endowment for the Arts*, 524 U.S. at 587–88 ("[W]e note that the Government may allocate competitive funding according to criteria that would be impermissible were direct regulation of speech or a criminal penalty at stake. So long as legislation does not infringe on other constitutionally protected rights, Congress has wide latitude to set spending priorities."); see *United States v. Am. Library Ass'n, Inc.*, 539 U.S. 194, 212 (2003).

CIPA does not "penalize" libraries that choose not to install such software, or deny them the right to provide their patrons with unfiltered Internet access. Rather, CIPA simply reflects Congress' decision not to subsidize their doing so. To the extent that libraries wish to offer unfiltered access, they are free to do so without federal assistance.

Id.

99. See *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 339 (2008) (holding that only a state's actions as a regulator are subject to the dormant Commerce Clause, but state actions as a market participant, like a bond issuer, are not (citations omitted)); *Reeves, Inc. v. Stake*, 447 U.S. 429, 440, 446 (1980) (characterizing South Dakota as a market participant in the sale of cement and noting that to hold otherwise "would rob South Dakota . . . of its foresight, risk, and industry."); *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) ("In Commerce Clause cases, for example, a 'basic distinction' exists 'between States as market *participants* and States as market *regulators*.' Similar distinctions exist with respect to the First Amendment.");

IV. CONCLUSION

In short, there is no legal remedy to cure antisemitism and all of its ripple effects. Fortunately, education can curb the frequency that people actually believe and spread antisemitic lies such as “Jews own the media.”¹⁰⁰ Additionally, states can constitutionally refuse to subsidize entities engaging in discriminatory boycotts of Israel with anti-BDS legislation.¹⁰¹ “[A] legislature’s decision not to subsidize the exercise of a fundamental right does not infringe the right.”¹⁰²

Mason & Dixon Lines Inc. v. Steudle, 683 F.3d 289, 292 (6th Cir. 2012) (finding that when a state contracts to build a road, it is acting as a market participant that is financed by state and federal funds); Independent Charities of Am., Inc. v. Minnesota, 82 F.3d 791, 801 (8th Cir. 1996) (“[W]e hold that the exclusion of non-local fund raisers from the Campaign does not violate plaintiffs’ First Amendment right to free speech or their rights to equal protection and due process. We further hold that the State is a ‘market participant’”); Park Shuttle N Fly, Inc. v. Norfolk Airport Auth., 352 F. Supp. 2d 688, 706 (E.D. Va. 2004) (noting that when government bodies operating airports are acting as market participants, “its regulations are subject to less First Amendment scrutiny.”); see also Kampeas, *supra* note 88 (quoting Northwestern University’s Professor Kontorovich as saying, “[states are] implementing laws that use state contracting power to fight back against racism,” when discussing the constitutionality of anti-BDS legislation).

100. See Freedom Research, *supra* note 36.

101. See Anne Crowell, *France Upholds Ruling That BDS Is Discrimination*, LOUIS D. BRANDEIS CTR. (Oct. 23, 2015), <http://brandeiscenter.com/blog/france-upholds-ruling-that-bds-is-discrimination/> (noting that in France, “promoters of a boycott against Israel were found guilty of inciting hate or discrimination and fined a collective \$14,500.”); Dov Kesselman & Jacob Oslick, *Academic Boycotts and Anti-Discrimination Laws: Tips to Protect Academic Employers*, SEYFARTH SHAW (Jan. 7, 2014), <http://www.laborandemploymentlawcounsel.com/2014/01/academic-boycotts-and-anti-discrimination-laws-tips-to-protect-academic-employers/> (noting that the boycott against Israel can amount to discrimination and discussing how the academic boycott of Israel could leave universities susceptible to liability under Title VII); JTA, *France Court Upholds ‘BDS Is Discrimination’ Ruling*, FORWARD (Oct. 23, 2015), <http://forward.com/news/breaking-news/323207/france-court-upholds-bds-is-discrimination-ruling/#ixzz465dTZGF3> (stating France found BDS boycotters guilty of discrimination); see also *What to Boycott*, BDS, <https://bdsmovement.net/get-involved/what-to-boycott> (last visited Oct. 26, 2016) (noting that the BDS movement targets Israeli companies and companies affiliated with Israel). BDS conduct is discrimination based on national origin because it discriminates based on a brand’s origin, Israel, or a brand’s affiliation with Israel. See *What to Boycott*, *supra*.

102. *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (internal quotation marks omitted) (quoting *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983)).