

HB1382\_RichardKaplowitz\_FAV  
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Richard Keith Kaplowitz  
Frederick, MD 21703

**TESTIMONY ON HB#/1382 - FAVORABLE**

**State Procurement - Prohibited Certifications - Boycotts of Foreign Countries**

**TO:** Chair Wells, Vice Chair Kerr, and members of the Government, Labor and Elections Committee

**FROM:** Richard Keith Kaplowitz

My name is Richard K. Kaplowitz. I am a resident of District 3, Frederick County. I am submitting this testimony in support of HB#1382, **State Procurement - Prohibited Certifications - Boycotts of Foreign Countries**

Governor Larry Hogan on 14 October 23, 2017, signed an Executive Order prohibiting State executive agencies from entering into contracts with businesses or entities that engage in boycotts of Israel. This Executive Order has raised concerns regarding its impact on freedom of speech, constitutionally protected political expression, and Maryland's commitment to upholding civil rights. The General Assembly recognizes the importance of ensuring State policies reflect the values of free expression, inclusivity, and nondiscrimination. It is essential to review and rectify State policies that may infringe upon constitutionally protected rights.

The Harvard Law Review studied the issues raised by the EO in detail. *Wielding Antidiscrimination Law to Suppress the Movement for Palestinian Rights*<sup>1</sup>

Much has been written arguing that anti-BDS laws violate the First Amendment.<sup>7</sup> However, there has been far less focus on the discrimination claim itself. This Note debunks the claim that BDS constitutes legally cognizable discrimination. It argues that anti-discrimination doctrines do not support this claim.

A strong antidiscrimination justification for these laws would constitute a compelling state interest that could trump countervailing First Amendment interests. However, as Part IV [of the article cited] explains, anti-BDS laws are not backed by a valid antidiscrimination interest.

This bill will reverse the EO of Governor Hogan by prohibiting a procurement officer from requiring, as a condition to submitting a bid or proposal on a State procurement, a certain certification from a bidder or offeror or including a certain clause in a State procurement contract or contract renewal relating to boycotts of foreign countries.

The documented misconduct by the Israeli government throughout Gaza and Iran and other areas of the Middle East demands a moral response but suppression of first amendment rights is an improper way to respond.

**I respectfully urge this committee to return a favorable report on HB#1382.**

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<sup>1</sup> <https://harvardlawreview.org/print/vol-133/wielding-antidiscrimination-law-to-suppress-the-movement-for-palestinian-rights/>