September 30, 2025

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we received the proposed initiative related to the right to boycott or engage in other activities to express opposition to the policies of the State of Israel toward Palestinians (A.G. File No. 25-0011).

BACKGROUND

Right to Free Speech, Assembly, and Equal Protection. The U.S. Constitution as well as law and policies guarantee the freedom of speech as well as the right to peacefully assemble and equal protection under law. States are free to adopt further laws and policies in this area that do not conflict with federal law. For example, the California Constitution—as well as state law and policies—similarly guarantee the freedom of speech and the right to peacefully assemble, equal protection under the law, and prohibit discrimination based on particular protected characteristics (such as age, gender, and national origin). State law and policies can also provide some constraints—such as to ensure that the expression of free speech or the right to assemble does not result in violence, harassment, or intimidation of others. Finally, local policies may be implemented as long as they do not conflict with federal or state law or policies.

Use of Boycotts, Divestment, and Sanctions. Boycotts (refusing to do business), divestment (selling assets or withdrawing money), or sanctions (financial or other punitive actions) against countries, organizations, businesses, or individuals have been used to express opposition to or seek change in policies. For example, the "Boycott Divestment Sanction" (BDS) movement has generally been associated with coordinated efforts to use such actions against the State of Israel to protest its policies toward Palestinians. Such actions can be an expression of the constitutional right to free speech. At the same time, such actions can be challenged for violating the constitutional right to equal protection under law or being discriminatory in nature.

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Federal Law Related to Boycotts, Divestment, and Sanctions. The U.S. Constitution and law regulate boycott, divestment, and sanction activities—particularly related to foreign countries and foreign commerce and limit state authority in this area. For example, federal law restricts the ability of U.S. citizens and residents from boycotting a country that is not subject to a U.S. imposed boycott for the purpose of foreign commerce. Additionally, certain federal entities have considered or implemented policies either explicitly or implicitly prohibiting boycotts of Israel as a condition of receiving grant monies in recent months.

State and Local Law Related to Boycotts, Divestment, and Sanctions. States and local governments are also able to adopt policies related to boycotts, divestment, and sanctions that do not conflict with the U.S. or their state constitutions or federal law. (For example, consistent with a federal directive, California currently boycotts Iran.) While existing California law and policies generally do not regulate boycotts, divestment, and sanctions specifically related to Israel, there are government entities with policies generally prohibiting boycotts and divestment. California law and policies generally focus on ensuring compliance with constitutionally protected nondiscrimination and other rights. For example, state law requires that people seeking or entering into a contract of more than $100,000 with a state entity certify that they are (1) in compliance with the state's non-discrimination laws, (2) that any policy they have against any sovereign nation recognized by the U.S. (including Israel specifically) does not violate the state's nondiscrimination laws, and (3) any policy taken to comply with federal or state sanctions or laws affecting sovereign nations do not violate the state's nondiscrimination laws. In contrast to California, other states have adopted laws—some of which have been subject to legal challenges—that explicitly or implicitly prohibit or limit boycott, divestment, and sanctions against Israel.

California Higher Education Institutions. California is home to the following public higher education systems: (1) the University of California, (2) the California State University, and (3) the California Community Colleges. The state Constitution and law place certain requirements on the operations of these institutions. Additionally, each system is generally governed by its own board that establishes policies governing all campuses within the system. The leaders of individual campuses within each system then have discretion to establish their own policies and procedures. This can result in very different policies across campuses, including those related to students and faculty members expressing support or protesting particular causes. For example, there are different policies on when, where, and how protests may occur; what types of activities can be supported using campus buildings or monies; and what actions may be taken to protect the safety of those on campus.

Public Investment and Retirement Funds. State and local government monies placed in investment and retirement funds are managed in various ways. For example, the California Public Employees' Retirement System is governed by a 13-member board. Federal and state law govern how these funds are administered. For example, the state Constitution requires the board of a public pension or retirement system have sole fiduciary responsibility to administer the system and to diversify investments to maximize earnings.

California Public Records Act (CPRA). The state Constitution guarantees the public the right to access information related to government business. The CPRA provides a statutory framework for obtaining copies of government records from state and local government entities, excluding the Legislature and judicial branch which are subject to other laws. The CPRA allows for certain public records, or specific information in them, to not be disclosed if the entity declining disclosure can demonstrate that (1) the record is specifically exempted by state law (such as records protected by attorney-client privilege) or (2) the public interest is better served by not disclosing the record. The CPRA authorizes people to ask the state trial courts to enforce this right to access public records. People who believe they will suffer harm from the disclosure of a public record may also ask the state trial courts to prevent disclosure of their information.

PROPOSAL

The proposed measure does not clearly specify whether it seeks to amend the state Constitution, state law, or both. We assume the measure makes changes to state law. This means that any federal or state Constitution requirements, as well as federal law, would override any of the measure's provisions that conflict with them.

Defines BDS Activities to Include All Activities Expressing Support for Palestinians and Opposition to Israel. As discussed above, there are existing federal, state, and local laws related to boycotts, divestments, and sanctions generally. Additionally, the BDS movement has generally been associated with coordinated efforts to use such actions against the State of Israel to protest its policies toward Palestinians. This measure includes a specific definition for "BDS activities" that extends beyond boycotts, divestments, and sanctions. Specifically, the measure defines BDS activities to include any action that "expresses support for Palestinian rights, or opposition to human rights abuses, occupation, or discriminatory practices by the State of Israel or entities complicit in such conduct."

Generally Affirms California Law and Policies Related to Free Speech, Discrimination, and Other Rights Allowing BDS Activities. Existing California law and policies protecting free speech, prohibiting discrimination, and protecting other rights generally allow individuals, businesses, and organizations to engage in BDS activities. The measure prohibits most limits on BDS activities and, as a result, it generally affirms these laws and policies. Specifically, the measure prohibits state and local government entities from adopting or enforcing any law, policy, or practice that restricts, discriminates, or punishes individuals, businesses, or organizations from engaging in BDS activities. It also prohibits state and local government entities from requiring people to agree to not participate in BDS activities in order to be eligible for contracts, grants, funding, or loans. Similarly, the measure prohibits state and local government entities from accepting any monies or entering into a contract that requires an agreement to not participate in or to renounce boycott activities. While these provisions generally affirm existing state laws and policies, it would prevent the creation of new laws and policies—such as those that have been adopted by other states—restricting BDS activities in the future.

Places Specific Restrictions on Education Institutions. While the measure generally affirms California law and policies allowing engagement in BDS activities, it places restrictions on state and local education institutions. The measure specifically prohibits public and private high school and higher education institutions from disciplining students for off-campus speech or communication related to BDS activities. It also prohibits any disciplinary or punitive action against employees at high schools and public higher education institutions who support (or refuse to stop) students in such speech or communication. Additionally, the state's public higher education institutions are prohibited from adopting or enforcing any regulation, policy, or administrative action that restricts or penalizes students, faculty, or university-recognized organizations for engaging in BDS activities. The measure specifies education institutions may still adopt regulations for how, when, and where individuals exercise their rights to freedom of speech and assembly. However, the measure specifies that these restrictions must be content-neutral—including being narrowly tailored to serve a significant government interest and not applied in a discriminatory or arbitrary manner that suppresses or burdens BDS activities.

Places Specific Restrictions on Public Investment and Retirement Funds. The measure places restrictions on public investment and retirement funds as well. Specifically, the measure prohibits public investment or retirement funds from adopting policies that infringe upon or restrict the right to support BDS activities. It also prohibits internal policies or investment directives that limit public or board member rights to advocate for or adopt investment decisions consistent with BDS activities.

Authorizes Penalties for Violations. The measure authorizes any individual or entity who believes its provisions have been violated to seek remedy from the trial courts. These remedies can include the trial court telling an entity that a particular rule or action is prohibited and should be stopped, as well as compensation for the violations. Under the measure, one can seek compensation in two key ways. One way is to seek actual damages for violations, but one must prove the existence of the damage and the amount of the damage in court. The second way is to ask the court for at least $10,000 per violation if actual damages are not proven or one chooses not to ask for actual damages. The measure also requires that individuals or entities who win their case be awarded reasonable attorney fees and costs.

Potentially Expands Records That Must Be Disclosed Under the CPRA. The measure states that any record—including communication and memorandums of understanding—that references or impacts BDS activities is a matter of significant public concern and is therefore presumed to be in the public interest to be released. As a result, such records would not be considered exempt from disclosure under the CPRA unless "a specific exemption" clearly applies. This could result in the release of records that would otherwise have been exempt from disclosure under existing law by a government entity demonstrating that the public interest is better served by not disclosing the record.

FISCAL EFFECTS

Net Increase in State and Local Government Costs. This measure's impact on state and local government entities depends on how it is interpreted and implemented, as well as how individuals respond to it. State and local governments would experience increased administrative and legal costs. These include costs to:

- Process, release, or dispute the release of records under the CPRA.
- Resolve allegations of violations of this measure through the trial courts.
- Develop guidance on how to change existing polices or to take other actions to ensure compliance with the provisions of this measure.

This cost increase could be partially offset by reduced costs for other activities. For example, state and local government entities could experience reduced costs if the measure reduces or eliminates litigation activities around how existing state and local law and policies apply to BDS activities. On net, state and local governments are likely to experience increased costs not likely to exceed the low millions of dollars annually. (We note that it is possible that current or future federal or private funding to state or local government entities is no longer available because they prohibit boycotts or other actions against Israel as a condition of receipt. However, the extent to which this might occur is unknown.)

Summary of Fiscal Effect. This measure would have the following fiscal effect:

- Net increase in state and local government costs, not likely to exceed the low millions of dollars annually, related to (1) developing new guidance and policies, (2) resolving alleged violations in the courts, and (3) responding to related public records requests.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Joe Stephenshaw
Director of Finance