



Israel Divestment Talking Points: A Primer for Engaging University Endowment Leadership

Introduction

These talking points address critical issues about university endowment divestment from companies doing business in Israel. We aim to provide comprehensive insights into the economic, legal, academic, and social implications of such decisions.

Background and Key Definitions

- 1. ADL believes that many of the founding goals of the BDS movement, which if implemented, would eradicate Israel, are antisemitic. Some BDS advocates and campaigns engage in antisemitic rhetoric.**
 - Boycott, Divestment and Sanctions (BDS) is an international campaign aimed at delegitimizing and pressuring Israel through diplomatic, financial, professional, academic, and cultural isolation. It rejects the Jewish people's right of self-determination and its ultimate goal is not to create a Palestinian state, but to dismantle the world's only Jewish state.
 - The movement's tactics, including calls for divestment from companies doing business with Israel, are unfair, one-sided, and do not promote constructive measures for Israeli-Palestinian engagement or peace negotiations.
 - BDS campaigns can create tensions in communities, particularly on college campuses, potentially leading to the isolation and intimidation of Jewish students and supporters of Israel.
- 2. Universities generally have a professionally staffed Investment Office and a lay-led Investment Committee which makes decisions about the endowment (similar to any nonprofit endowment).**
 - The Investment Office is responsible for analyzing and proposing investment strategies, as well as eventually implementing those strategies. The Investment Committee is responsible for reviewing asset allocation policies, endowment performance, and strategy proposals and has ultimate oversight over investment decisions.
 - The Investment Committee has a fiduciary duty to the financial health of the organization, and a RIA (registered investment advisor with the U.S Securities and Exchanges Commission) will advise and implement those decisions.
 - Investment Committee members are usually individuals with investment expertise and some members will be Trustees of the university.
- 3. As a general matter, Investment Committees have a fiduciary duty to the university which is governed by the Uniform Prudent Management of Institutional Funds Act (UPMIFA).**
 - Fiduciary duty is a legal responsibility for duties of care, loyalty, good faith, confidentiality, prudence and disclosure when serving the best financial interests of the university through managing the endowment investment.

- UPMIFA is a law enacted in 49 states (not in Pennsylvania) designed to protect the endowments of private and public nonprofit or charitable organizations, including educational institutions, by ensuring that they are managed in a prudent manner. It requires that committees have a UPMIFA compliant Investment Policy Statement.
- Committees generally convene once per quarter to review performance and strategy.

Economic Implications

- 1. Divesting from companies doing business in Israel could result in lower returns and a less diversified portfolio for a university's endowment.**
 - Over 100 companies from the S&P 500 conduct business in Israel, including many of the world's largest and most successful companies such as Apple, Microsoft, Alphabet (Google) and Amazon.
 - Divesting from these companies could adversely affect the university's ability to fund scholarships and research, and to maintain its facilities.
- 2. Universities that divest from Israel risk alienating donors and alumni, including Jews, for whom a connection to Israel is core to their identity.**
 - Even donors not deeply invested in the Israel issue may be frustrated by universities' willingness to consider divestment demands from students who have violated school policies.
 - This could lead to a significant decrease in alumni contributions, affecting the university's financial health.
 - For instance, following divestment decisions at some universities, major donors have publicly announced the withdrawal of planned gifts.
- 3. Universities divesting from Israel may face reduced access to capital as donors withhold contributions.**
 - This could force them to rely more on debt financing.
 - Investors may view divesting universities as higher risk, leading to lower bond prices and higher borrowing costs.
- 4. There are potential tax implications for endowments that divest from Israel.**
 - Since 2018, many private colleges and universities have been subject to a 1.4% federal excise tax on endowment income.
 - There are legislative proposals to raise this tax rate significantly for universities perceived as failing to protect students from antisemitism or allowing disruptive protests.
 - Institutions that use their endowments to make political statements, such as divestment, risk exposing themselves to higher taxes on their endowment income.
 - Some proposed legislation suggests tax rates as high as 50% for endowments of universities deemed non-compliant with certain policies. While unlikely to pass, this could bring more governmental scrutiny and oversight to university endowments.

5. **Divestment from Israel could set a precedent for campaigns targeting various social or political issues, or companies.**
 - This could lead to demands to divest from companies involved in a wide range of industries or practices.
 - Such a trend could significantly limit the endowment's investment options, affecting returns and the ability to support university goals.
 - Examples of potential targets could include fossil fuel companies, fast food chains, or tech companies with privacy concerns.
6. **There are other ways universities could influence corporate behavior by taking action as a shareholder rather than taking on the many risks of divestment.**
 - Students may have legitimate concerns about human rights risks in the university's endowment investments.
 - It is important to recognize that no country, industry, or company is perfect.
 - Adopting divestment as a primary tool to address corporate imperfections risks leaving the endowment's equity portfolio with a significantly limited number of stocks, adversely impacting diversification, returns, and the institution's ability to support its goals.
 - The university could instead engage as active shareholders to promote positive change at the companies it invests in.

Legal and Policy Risks

1. **Even a small symbolic divestment could be interpreted as a breach of fiduciary duty.**
 - Making a politically motivated investment decision, however small, could be interpreted as a breach of fiduciary duty under the Uniform Prudent Management of Institutional Funds Act (UPMIFA) if it is not based on sound economic reasoning.
 - As Max M. Schanzenbach, a professor at Northwestern University Pritzker School of Law and an expert on fiduciary law, notes in the Wall Street Journal, "divesting from Israel would be a breach of fiduciary obligation that could expose trustees to personal liability" for not prioritizing the financial health and efficiency of the endowment portfolio.
2. **Universities might face legal risks from state governments with anti-BDS legislation.**
 - Many states have passed laws prohibiting BDS-related activity.
 - State attorneys general could pursue legal action against universities engaging in boycotts directed against companies doing business with Israel.
 - This could lead to costly lawsuits and legal complications for the university.
 - As of 2024, more than 30 states have anti-BDS legislation or executive orders.
3. **Even private universities considering divestment could face legal risks from state governments.**
 - More than half of the states have passed laws prohibiting state entities from contracting with businesses or other entities that boycott Israel, and universities that engage in the BDS movement against Israel could potentially jeopardize existing contracts.

- Even as a private university, your institutions may have contracts with state entities and/or receive financial support from the state.
- For example, many private universities receive state funding for research grants or student financial aid programs.
- UPMIFA requirements would still apply if the private university operates as a nonprofit organization or its endowment is used for charitable purposes.

Academic Impact

- 1. On many campuses, calls for divestment have been accompanied by calls for academic boycotts, which run contrary to core principles of academic freedom.**
 - It can limit educational opportunities for students and undermine the ability of institutions to fulfill their educational missions.
 - Academic boycotts can restrict events, activities, projects, or programs involving Israeli academic institutions. As the Association of Public & Land-Grant Universities noted in 2014, academic boycotts "wrongly limit the ability of American and Israeli academic institutions and their faculty members to exchange ideas and collaborate on critical projects that advance humanity, develop new technologies, and improve health and well-being across the globe."
- 2. Divestment can be seen as taking sides on contested geopolitical issues, which may not align with universities' missions.**
 - Universities' missions typically involve advancing knowledge and understanding through research, analysis, and debate.
 - Divestment may also conflict with the Investment Office's mission to preserve and grow the endowment to support the university's educational mission.
 - Many university mission statements emphasize the importance of fostering diverse perspectives and global understanding.

Social and Political Considerations

- 1. Comparisons to the apartheid South Africa divestment movement of the 1980s are inaccurate and misguided.**
 - The geopolitical situation and international consensus regarding South Africa in the 1980s were markedly different from the current Israeli-Palestinian conflict.
 - The "apartheid" label is inaccurate and inflammatory when applied to Israel, oversimplifying a complex situation and ignoring Israel's democratic institutions where Arab citizens participate fully, including in government.
 - While Israel faces societal challenges, its policies are not comparable to South African apartheid, and using this term often hinders constructive dialogue and conflict resolution.
 - We ought to encourage nuanced discussions that reflect the situation's complexity, rather than accepting oversimplified characterizations that may impede understanding and progress.

2. Anti-Israel divestment is a one-sided measure that does not promote a better future for Palestinians and Israelis.

- Even Palestinian President Mahmoud Abbas has stated that Palestinians do not support a boycott of Israel.
- The movement places the entire onus for the conflict on Israel alone and does not support constructive measures to build Israeli-Palestinian engagement.
- If activists were genuinely committed to promoting peace, they would advocate for strategic investments in the Palestinian economy and peacebuilding initiatives.

3. Anti-Israel divestment campaigns can feed into the demonization of Israel which can contribute to rising levels of antisemitism.

- Anti-Israel divestment campaigns can feed into the demonization of Israel and mischaracterization of Zionism, the movement for the self-determination and statehood for the Jewish people in their ancestral homeland.
- At a time of significantly rising levels of antisemitism, this can contribute to conditions where Jews are targeted for their actual or perceived connection to Israel.
- ADL has documented a 360 percent increase in antisemitic incidents in the US since October 7, 2023.
- From October 7 to the end of 2023, antisemitic incidents on university campuses were 1,062% higher than the same period in 2022.

4. The BDS movement hinders dialogue and understanding between Israelis and Palestinians.

- The BDS movement's policy of "anti-normalization" forbids people-to-people exchanges and dialogue opportunities between Israelis and Palestinians.
- It opposes interactions between "pro-Israel" and "pro-Palestine" groups unless they first recognize the BDS narrative.
- This approach hinders the fundamental building blocks for Israeli-Palestinian understanding, peace-building, and ultimate reconciliation at the grassroots level.

5. Accusing Israel of genocide is not only inaccurate but also serves to demonize the state.

- The term "genocide" has a specific legal definition that Israeli policies and actions do not meet. It requires intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.
- Accusing Israel of genocide diminishes recognized acts of genocide, such as the Holocaust or the Rwandan genocide.
- Using terms like "cultural genocide" is equally problematic, as it still invokes the serious legal implications of the term genocide, which are misapplied in the context of the Israeli-Palestinian conflict.

6. **Jewish Voice for Peace (JVP) is a radical, fringe anti-Zionist activist group that does not represent mainstream Jewish views.**

- It falsely claims to represent a mainstream voice within the Jewish community while advocating for the boycott of Israel and the eradication of Zionism.
- JVP's rhetoric and actions can contribute to a hostile environment for Jewish students on campus, particularly those who identify with Israel.
- Some JVP members and chapters have expressed support for violence against Israelis and occasionally promoted antisemitic tropes.
- Universities should be cautious about uncritically accepting JVP's claims, as they often vilify Jews who identify with Israel and can contribute to antisemitism on campus.

Conclusion

Divestment from companies doing business in Israel presents significant financial, legal, academic, and social risks for universities. It may negatively impact endowment returns, expose the institution to legal challenges, limit academic freedom, and contribute to a divisive campus environment. Universities are encouraged to carefully consider these multi-faceted implications before making any decisions regarding divestment.

***Disclaimer:** This document is for informational purposes only and should not be construed as providing legal or financial advice. Universities should consult with their legal and financial advisors before making any decisions regarding investment policies or divestment actions.*