

No. 22-20047

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

A & R ENGINEERING AND TESTING, INCORPORATED,

Plaintiff-Appellee,

v.

KEN PAXTON, Attorney General of Texas,

Defendant-Appellant.

On Appeal from the United States District Court for the
Southern District of Texas, Houston Division
Case No. 4:21-CV-3577

BRIEF OF *AMICI CURIAE* THE CENTER FOR CONSTITUTIONAL RIGHTS
AND PALESTINE LEGAL IN SUPPORT OF
PLAINTIFF-APPELLEE AND AFFIRMANCE

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Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A)
and Fifth Circuit Rules 28.2.1 and 29.2, *amici curiae* The Center for Constitutional
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INTERESTS OF *AMICI CURIAE*¹

The Center for Constitutional Rights is a national non-profit legal, educational, and advocacy organization dedicated to advancing and protecting rights guaranteed by the Constitution and international law. For over fifty years, the Center for Constitutional Rights has protected the rights of marginalized political activists and litigated historic First Amendment cases, such as *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman*, 496 U.S. 310 (1990); and *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). More recently, this has meant representing Palestinian rights advocates whose protected speech has been suppressed. *See Salaita v. Kennedy*, 118 F. Supp. 3d 1068 (N.D. Ill. 2015); *Awad v. Fordham Univ.*, 64 Misc. 3d 1234(A) (N.Y. Sup. Ct. 2019), *rev'd*, 139 N.Y.S.3d 154 (N.Y. App. Div. 2020), *appeal denied*, 168 N.E.3d 853 (N.Y. 2021); *Davis v. Cox*, 12 Wash. App. 2d 1022 (Wash. Ct. App. 2020); *Bronner v. Duggan*, 364 F. Supp. 3d 9 (D.D.C. 2019), *aff'd*, 962 F.3d 596 (D.C. Cir. 2020); *Am. Studies Ass'n v. Bronner*, 259 A.3d 728 (D.C. 2021).

Palestine Legal is a non-profit legal and advocacy organization specifically dedicated to protecting the civil and constitutional rights of people in the U.S. who

¹ This Brief is submitted pursuant to Federal Rule of Appellate Procedure 29 and Fifth Circuit Rule 29 in support of Plaintiff-Appellee, and seeks affirmance of the district court's decision. Appellant and Appellee have consented to the filing of this Brief. No party's counsel authored this Brief in whole or in part, and no one other than *amici curiae* contributed money intended to fund preparing or submitting the Brief.

speak out for Palestinian freedom. Palestine Legal tracks incidents of censorship and efforts to suppress expression supporting Palestinian rights, including the numerous anti-boycott bills of the kind at issue in this case. Palestine Legal has advised hundreds of clients whose rights have been violated because of anti-boycott laws and other censorship campaigns targeting speech supporting Palestinian rights.

Together, *amici* have relevant, first-hand knowledge of the consequences of laws such as Texas Government Code § 2271.002(b) (“Chapter 2271”), as well as other censorship campaigns directed at advocacy for Palestinian rights, which have the purpose and effect of chilling speech on an issue of public concern. *Amici* write to situate Chapter 2271 in the context of this broader, coordinated and well-financed effort to stifle viewpoints that support Palestinian rights and to urge this Court to safeguard First Amendment-protected expressive activity, including that which challenges the status quo.

INTRODUCTION AND SUMMARY OF ARGUMENT

In recent years, a growing number of people have mobilized in support of Palestinian freedom and equality and in opposition to Israel’s human rights abuses. Many have heeded the call for “Boycott, Divestment and Sanctions” (BDS) that was issued by Palestinian civil society in 2005 and has been endorsed by a diverse and growing array of religious, ethnic, and social justice entities in the U.S. In response to Israel’s human rights violations against Palestinians and the complicity of some

companies and institutions, individuals and entities are promoting and engaging in boycotts in a manner that mirrors social justice boycotts challenging discrimination throughout history, from the Montgomery bus boycotts to the South African anti-apartheid boycotts to most recently, the boycott of Russia over its invasion of Ukraine. Appellee A & R Engineering and Testing, Inc. and its owner Rasmy Hassouna likewise boycott Israel in protest of its treatment of Palestinians. Pl.-Appellee Br. 10.

This growing movement for Palestinian rights, and especially the use of boycotts, has been aggressively countered by its ultimate target, the Israeli government, which, along with aligned private groups, has devoted significant financial resources to quash it. From 2016 to 2019, the Israeli government allotted over \$100 million to fight BDS,² including more than \$860,000 to establish a legal network to stop the boycott movement.³ Even Israel's spy agency, the Mossad, has been deployed to combat boycott activities.⁴

² Nathan Thrall, *How the Battle Over Israel and Anti-Semitism is Fracturing American Politics*, N.Y. TIMES MAG. (Mar. 28, 2019), <https://www.nytimes.com/2019/03/28/magazine/battle-over-bds-israel-palestinians-antisemitism.html>.

³ Maayan Jaffe-Hoffman, *Strategic Affairs Ministry to Form Anti-BDS Legal Network*, JERUSALEM POST (Dec. 20, 2018), <https://www.jpost.com/Arab-Israeli-Conflict/Ministry-of-Strategic-Affairs-to-create-international-anti-BDS-legal-team-574946>.

⁴ A January 2019 freedom of information request of Israel's Minister of Strategic Affairs' schedule revealed a record of cooperation between the Ministry of Strategic Affairs and Israel's spy agency, the Mossad, to combat boycott activities in the U.S. Noa Landau, *Mossad Involved in Anti-Boycott Activity, Israeli Minister's Diaries Reveal*, HAARETZ (June 12, 2019), <https://www.haaretz.com/israel-news/premium-mossad-involved-in-anti-boycott-activity-israeli-minister-s-diaries-reveal-1.7360253>; Linah Alsaafin, *From Spying to Lobbying, Israel's Fight Against BDS Intensifies*, AL-JAZEERA (June 20, 2019),

This government funding, combined with the resources of numerous Israel-aligned private organizations, has resulted in the introduction of at least 200 state and federal bills in the United States since 2014 that attempt to punish or criminalize individuals or entities that engage in boycotts for Palestinian rights.⁵ Many of these bills failed in their more draconian initial iterations—which included attempts to impose jail time and six-figure penalties, and defund entire state university systems, for engaging in BDS. To date, 34 states have adopted versions of laws that seek to chill speech supporting Palestinian rights by targeting BDS.⁶

Politicians, Israel lobby groups and the Government of Israel itself have made it clear that the purpose of these laws is to single out Israel for special treatment by preventing Americans from collectively organizing their economic power to end discriminatory treatment or injustice through a tactic people have used since this country's founding. It is within this climate that Texas enacted its first anti-boycott law, H.B. 89, 85th Leg., Reg. Sess. (Tex. 2017), passed with the explicit purpose of opposing the BDS movement. *Amawi v. Pflugerville Indep. Sch. Dist.*, 373 F. Supp.

<https://www.aljazeera.com/news/2019/06/spying-lobbying-israel-fight-bds-intensifies-190620170711122.html>; Asa Winstanley, *Mossad Role in Israel's War Against BDS Confirmed*, ELECTRONIC INTIFADA (June 14, 2019), <https://electronicintifada.net/blogs/asa-winstanley/mossad-role-israels-war-against-bds-confirmed>.

⁵ *Legislation targeting advocacy for Palestinian rights*, PALESTINE LEGAL, <https://legislation.palestinelegal.org/> (last visited June 21, 2022).

⁶ Thirty-two states have anti-boycott laws in effect as of June 1. Two additional states, Tennessee and West Virginia, passed anti-boycott laws that go into effect in July. *See Legislation targeting advocacy for Palestinian rights: Statistics*, PALESTINE LEGAL, <https://legislation.palestinelegal.org/#statistics> (last visited June 21, 2022).

3d 717, 731 (W.D. Tex. 2019) (“It is indisputable that H.B. 89 targets participation in BDS campaigns. Both Representative Phil King, the bill’s sponsor, and Governor Gregg [sic] Abbott have referred to H.B. 89 as the ‘anti-BDS bill.’”), *vacated sub nom. Amawi v. Paxton*, 956 F.3d 816 (5th Cir. 2020). After the district court enjoined the law on First Amendment grounds, it was amended to exclude those plaintiffs. Texas has again explicitly stated that the purpose of the amended law is to punish entities that engage in BDS by denying them government contracts. Def.-Appellant (State) Br. (“SAB”) 4. Absent an injunction against Chapter 2271, that law will chill and suppress boycotts for Palestinian rights. The Constitution does not permit the government to use its power to punish entities seeking to change an unjust social order by engaging in boycotts aimed at ending discriminatory and other unlawful state conduct.

ARGUMENT

I. BOYCOTTS TO ADVANCE PALESTINIAN RIGHTS FALL WITHIN A HISTORIC TRADITION OF CONSTITUTIONALLY-PROTECTED EXPRESSIVE ACTIVITY.

Almost every major social movement has at some point utilized boycotts as a method to raise awareness about a persistent social injustice, by leveraging political and economic mobilization to urge changes in government or private practices. Boycotts stand alongside other forms of expressive political activity such as demonstrations, picketing, and sit-ins. Their historical pedigree and legitimacy as a

tool to challenge injustice, including against another country, is unimpeachable. Boycotts were crucial to the founding of the United States, as colonists boycotted British goods to protest taxation without representation. In the early 1790s, supporters of abolition of the slave trade in Britain urged a boycott of sugar produced through slavery.⁷ In 1903, anti-colonial actors in India launched an independence movement by calling for a boycott of British goods.⁸ In 1905, Chinese citizens boycotted American products to protest the extension of the Chinese Exclusion Act.⁹ In 1955, Black organizers in the South sparked the Montgomery bus boycott to protest racial segregation throughout the South.¹⁰ In the 1960s, Cesar Chavez led the National Farm Workers Association to join a strike and nationwide boycott of grape growers to protest working conditions, which led to major reforms.¹¹ And, notably, a global boycott, divestment, and sanctions movement helped dismantle apartheid in South Africa.¹²

⁷ Mike Kaye, *The Tools of the Abolitionists*, BBC.CO.UK, http://www.bbc.co.uk/history/british/abolition/abolition_tools_gallery_07.shtml (last updated Feb. 17, 2011).

⁸ CHARLES ANDREW ORR, *A STUDY OF INDIAN BOYCOTTS* (1940).

⁹ Jane Leung Larson, *The 1905 Anti-American Boycott as a Transnational Chinese Movement*, 21 CHINESE AM.: HIST. & PERSPS. 191 (2007); John W. Foster, *The Chinese Boycott*, 97 THE ATLANTIC MONTHLY 118 (1906), available at <https://www.theatlantic.com/past/docs/unbound/flashbks/china/foster.htm>.

¹⁰ See E.R. Shipp, *Rosa Parks, 92, Founding Symbol of Civil Rights Movement, Dies*, N. Y. TIMES (Oct. 25, 2005), <https://www.nytimes.com/2005/10/25/us/25parks.html>.

¹¹ Maureen Pao, *Cesar Chavez: The Life Behind the Legacy of Farm Labor Rights*, NPR (Aug. 12, 2016), <https://www.npr.org/2016/08/02/488428577/cesar-chavez-the-life-behind-a-legacy-of-farm-labor-rights>.

¹² See William Finnegan, *Postscript: Nelson Mandela, 1918-2013*, NEW YORKER, (June 8, 2013), <https://www.newyorker.com/news/news-desk/postscript-nelson-mandela-1918-2013> (“The anti-

Today, as Russia enters the fourth month of its widely condemned military invasion of Ukraine, a boycott movement has emerged to pressure Putin’s regime to comply with international law. To date, nearly a thousand private corporations across a wide array of industries have ceased or significantly limited their operations within Russia in protest of the invasion.¹³ This strategy is directly influenced by the civic power of the American consumer, as was noted in a recent op-ed: “Americans who are sickened by businesses’ indifference to the bloodshed can make their voices heard: If the companies won’t boycott Russia, boycott the companies.”¹⁴ Wide calls have also been issued for a cultural boycott of Russia to further isolate the state.¹⁵ BDS uses nearly identical tactics, often pressing the very same corporate actors (such as Hewlett Packard and Caterpillar, whose business in Israel serves its occupation of Palestinians) to stop doing business in Israel until it complies with international law.

apartheid movement gained traction globally. Economic sanctions and the divestment campaign, although opposed by conservative Western leaders, including Ronald Reagan and Margaret Thatcher, who continued to call the A.N.C. a ‘terrorist organization,’ began to take their toll.”); Håkan Thörn, *Solidarity Across Borders: The Transnational Anti-Apartheid Movement*, 17 VOLUNTAS: INT’L J. VOLUNTARY & NONPROFIT ORGS. 285 (2006).

¹³ See Jeffrey Sonnenfeld et al., *Almost 1,000 Companies Have Curtailed Operations in Russia—But Some Remain*, YALE SCH. OF MGMT. (June 21, 2022), <https://som.yale.edu/story/2022/almost-1000-companies-have-curtailed-operations-russia-some-remain>.

¹⁴ Jeffrey Sonnenfeld & Steven Tian, *Some of the Biggest Brands are Leaving Russia. Others Just Can’t Quit Putin. Here’s a List.*, N.Y. TIMES (Apr. 7, 2022), <https://www.nytimes.com/interactive/2022/04/07/opinion/companies-ukraine-boycott.html>.

¹⁵ See Yasmeen Serhan, *Why the Cultural Boycott of Russia Matters*, THE ATLANTIC (Mar. 2, 2022), <https://www.theatlantic.com/international/archive/2022/03/ukraine-russia-culture-boycott-putin/623873/>.

A. The Goal of BDS is to End Discrimination, Military Occupation and Apartheid.

In 2005, a diverse coalition of over 170 Palestinian civil society organizations located in Israel, the occupied Palestinian territory, and the diaspora—including unions, academic institutions, cultural and arts groups, and non-governmental organizations—issued a call to “international civil society organizations and people of conscience all over the world to impose broad boycotts,” “implement divestment initiatives,” and advocate for “states to impose embargoes and sanctions” to pressure Israel to abide by international law.¹⁶ This peaceful call for solidarity from the international community sought to mirror the political tactics used by social justice activists who successfully challenged South Africa’s apartheid regime through direct action, including by calling for non-violent boycotts, divestment, and sanctions.¹⁷

Anchored in universal principles of human rights, the call for BDS espouses equal rights for all and categorically opposes all forms of racism, including antisemitism.¹⁸ The call urges nonviolent pressure on Israel until it “meets its

¹⁶ *Palestinian Civil Society Call for BDS*, BDSMOVEMENT.NET (July 9, 2005), <https://bdsmovement.net/call>.

¹⁷ See Tutu: *Israel’s Humiliation of Palestinians ‘Familiar to Black South Africans’*, HAARETZ (Mar. 10, 2014), <https://www.haaretz.com/2014-03-10/ty-article/israels-treatment-of-palestinians-like-apartheid/0000017f-f422-d47e-a37f-fd3e6e610000>; Nathan Thrall, *BDS: How a Controversial Non-Violent Movement has Transformed the Israeli-Palestinian Debate*, THE GUARDIAN (Aug. 14, 2018), <https://www.theguardian.com/news/2018/aug/14/bds-boycott-divestment-sanctions-movement-transformed-israeli-palestinian-debate>; AJ+, *What Does BDS Mean for Palestine?*, YOUTUBE (Oct. 26, 2017), <https://www.youtube.com/watch?v=RAXYkenR48w>.

¹⁸ *What is BDS?*, BDSMOVEMENT.NET, <https://bdsmovement.net/what-is-bds> (last visited June 21, 2022).

obligation to recognize the Palestinian people’s inalienable right to self-determination and fully complies with the precepts of international law.”¹⁹ It demands: an end to the discrimination and second-class status experienced by Palestinian citizens of Israel; the right of Palestinian refugees to return to their lands; and an end to Israel’s military occupation, settlements, checkpoints, and “Apartheid Wall,” which force Palestinians in the West Bank to live in ghettos and those in Gaza to live in the largest open air prison in the world.²⁰

B. BDS is Protected by the First Amendment.

Plaintiff-Appellee A & R Engineering & Testing, Inc. boycotts Israel because of its treatment of Palestinians. Pl.-Appellee Br. 10. Its owner, Ramsy Hassouna, was born in the Gaza Strip, which has been under Israeli military occupation since

¹⁹ *Palestinian Civil Society Call for BDS*, *supra* note 16.

²⁰ BDS advocates maintain that the Israeli government has and continues to engage in systematic practices to deny Palestinians justice and equality under the law—practices that international bodies have found to violate well-established international legal obligations. These include: prolonged belligerent military occupation of Gaza and the West Bank, including East Jerusalem; the Gaza closure that prevents the movement of people and goods and denies fundamental rights to its two million Palestinian residents; expropriation of, and building of settlements on, Palestinian land; unlawful transfer of members of Israelis into the occupied Palestinian territory and forcible displacement of Palestinians; annexation of Palestinian land through, among other methods, construction of the Wall that the International Court of Justice has found to violate international law; expropriation of Palestinian natural resources; demolition of Palestinian homes; and the maintenance of a facially discriminatory legal system, including the use of excessive force, mass incarceration, indefinite detention without charge, discriminatory arrests of Palestinians living in the occupied Palestinian territory, and over fifty laws that discriminate against Palestinian citizens of Israel because they are not Jewish. *See, e.g., World Report 2022: Israel and Palestine: Events of 2021*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2022/country-chapters/israel/palestine> (last updated Apr. 11, 2022); *The Discriminatory Laws Database*, ADALAH: THE LEGAL CTR. FOR ARAB MINORITY RIGHTS IN ISR., <https://www.adalah.org/en/content/view/7771> (last updated Sept. 25, 2017).

1967 and a full military siege since 2007.²¹ As a Palestinian living under Israeli occupation, he was not entitled to citizenship and had to ask the Israeli government—which controls exit and entry into Gaza²²—for permission to leave Gaza to come to the U.S. to study engineering.²³ Hassouna believes in using the nonviolent tactic of boycotts to pressure Israel into ending its military occupation of Palestinian land. *A & R Eng'ing & Testing, Inc. v. City of Houston*, No. 4:21-CV-03577, 2022 WL 267880, at *2 (S.D. Tex. Jan. 28, 2022).

Boycotts for Palestinian rights are situated at the heart of protected expressive conduct critical of an unjust status quo—in this case discrimination that is so severe Amnesty International and Human Rights Watch call it “apartheid”²⁴—as was the boycott the U.S. Supreme Court held was unambiguously protected by the First Amendment in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). Though the district court describes the BDS movement’s explicit goals to *end discrimination* and military occupation, and notes that there is nothing in the record showing

²¹ Erum Salam, ‘*I thought I was a free man*’: the engineer fighting Texas’s ban on boycotting Israel, THE GUARDIAN (Dec. 7, 2021), <https://www.theguardian.com/us-news/2021/dec/07/texas-ban-boycotting-israel>; *Israel: 50 Years of Occupation Abuses*, HUMAN RIGHTS WATCH (June 4, 2017), <https://www.hrw.org/news/2017/06/04/israel-50-years-occupation-abuses>.

²² *Restrictions on Movement*, B’TSELEM (Nov. 11, 2017), https://www.btselem.org/freedom_of_movement.

²³ ‘*I thought I was a free man*’, *supra* note 21.

²⁴ *Israel’s Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity*, AMNESTY INT’L (Feb. 1, 2022), <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>; *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, HUMAN RIGHTS WATCH (Apr. 27, 2021), <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution/>.

antisemitism on the part of the BDS movement and that the motivating factor of anti-BDS legislation is “probably” the BDS movement, it simultaneously states that antisemitism by *other* groups across historical periods (German Nazis, white supremacists) “separates this case” from “other fact patterns that implicate the First Amendment.” *A & R Eng’g & Testing, Inc.*, 2022 WL 267880, at *2, 4. Antisemitism and attacks against Jews must be condemned, but Palestinians and their supporters in the U.S. have nothing to do with such attacks, and must not lose their First Amendment rights because Nazis once used boycotts to target Jews simply for being Jewish.²⁵ The BDS movement has the noble purpose of ending state discrimination against Palestinians, and corporate complicity with it. This purpose couldn’t hue more to the purpose of the NAACP’s boycotts in *Claiborne*.

Texas does not claim Chapter 2271 is about ending discrimination against Jews or Israelis, because it is not. Rather, Texas states that the purpose of Chapter 2271 is to stop boycotts of Israel by taking government contracts away from certain

²⁵ The label of antisemitism has been disingenuously used against the BDS movement. *See 240 Jewish and Israeli Scholars to German Government: Boycotts are a Legitimate and Non-Violent Tool of Resistance*, BDS MOVEMENT (June 12, 2019), <https://bdsmovement.net/news/240-jewish-and-israeli-scholars-german-government-boycotts-are-legitimate-and-non-violent-tool>; Letter from Israeli human rights organizations to Dr. Wolfgang Schäuble, President of the Bundestag (Aug. 6, 2019), available at https://www.btselem.org/sites/default/files/2019-06/20190608_israeli_ngo_letter_to_bundestag_president.pdf.

businesses and that this is permissible because *Claiborne* did not extend First Amendment protection to “refusing to deal.” SAB 4, 19, 23.²⁶

Texas’s argument that *Claiborne* only protects the accompanying elements of a boycott—but not the actual boycotting of a business—does not square with *Claiborne* itself. Like Texas, Mississippi punished those who withheld their patronage from white establishments of Claiborne County in response to the NAACP boycott call by refusing to exempt the civil rights organization from “all damages ‘resulting from the boycott.’” *Claiborne*, 458 U.S. at 921. In reversing the lower court’s judgment of liability against the NAACP, the Court held that the NAACP’s boycott involved “inseparable” established rights of “speech, assembly, association, and petition” while noting that it was “[t]hrough exercise of these First Amendment rights . . . [that] petitioners sought to change a social order that had consistently treated them as second-class citizens.” *Id.* at 911-12. The Court described at length the different activities that were part and parcel of that boycott, explicitly recognizing that “[e]ach” of the elements of the boycott is a “form of speech or conduct that is ordinarily entitled to protection.” *Id.* at 907.

²⁶ Texas further claims, absurdly, that it is also trying to protect Palestinian businesses. SAB 4. There is absolutely nothing in the legislative history, nor in the numerous amicus briefs in support of the State, including by Governor Abbott and sixty-seven Texas legislators, to support the claim that the purpose of this law is to protect Palestinian businesses or individuals.

If the *Claiborne* Court had wished to exempt the actual withholding of patronage—i.e. the boycott itself—from First Amendment protection, it would have had to explicitly state it was doing so. But such a reading would have potentially absurd (and unconstitutional) consequences that would render all political boycotts meaningless. Under Texas’s unsupported interpretation of *Claiborne*, the Constitution would allow the NAACP and its members *to advocate for* the boycott of white establishments to challenge a political system that denied Black people basic rights of dignity and equality, without being punished—but *actually engaging* in a boycott could be punishable. Such an interpretation is not supported by a close reading of the case or the First Amendment. The expressive activity A & R Engineering would be forced to disavow by signing the certification in order to enter into a contract with any Texas governmental entity is no different than that deemed fully entitled to First Amendment protection in *Claiborne*.

II. CHAPTER 2271 IS PART OF A BROADER EFFORT TO SUPPRESS GROWING ADVOCACY IN SUPPORT OF PALESTINIAN RIGHTS.

The legislative history of Chapter 2271 and its predecessor H.B. 89 expressly reveals that its goal is to sanction citizens whose views do not accord with the State’s views that favor upholding an apartheid state. *Amawi*, 373 F. Supp. 3d at 750. State Representative Phil King—H.B. 89’s sponsor—and Governor Greg Abbott have made statements that H.B. 89 was a reaction to the BDS movement for Palestinian

rights, calling it the “anti-BDS bill.” *Id.* King has stated that BDS “is not something most Texans approve of when it’s aimed against a friend of Texas,” and that H.B. 89’s purpose is to “send[] a strong message” that Texas sides with Israel. *Id.* When signing the bill into law, Governor Abbott stated that “we will not tolerate [boycott] actions against an important ally.” *Id.* *Amawi* found that the legislative history revealed that the purpose of H.B. 89 was not to stop discrimination but to chill advocacy for Palestinian rights. *Id.* at 749-50.

After *Amawi* ruled that H.B. 89 violated the First Amendment, legislators amended the law to exclude sole proprietors, companies with fewer than ten employees, and contracts worth less than \$100,000 from the prohibition on state contracts, thus mooting the lawsuit.

Governor Abbott makes clear that the target of Chapter 2271, like H.B. 89, is the BDS movement for Palestinian rights. Governor’s Amicus Br. 1. That Chapter 2271 was intended to punish a political movement opposing discrimination and apartheid is even clearer when viewed in the larger context of similar legislative efforts—and related, coordinated campaigns—driven by the Israeli government and aligned private groups that attempt to suppress a movement seeking to change Israeli state policies that oppress Palestinians.

A. Chapter 2271 is Part of a Broader Effort by the Israeli Government and its Supporters to Suppress Growing Support for Palestinian Rights.

An increasing number of prominent individuals and institutions are protesting Israeli state practices that violate Palestinian rights, including by endorsing BDS to effect change. In line with wider efforts to push for corporate accountability for and divestment from social injustices, several major U.S.-based religious institutions have endorsed and participated in BDS initiatives, including the Evangelical Lutheran Church in America, the Presbyterian Church (USA), the Mennonite Church, the United Methodist Church and the United Church of Christ.²⁷ Numerous foundations and pension funds—including the Bill and Melinda Gates Foundation, the Soros Fund, and TIAA-CREF—have divested from companies in response to their facilitation of human rights violations in Israel and the occupied Palestinian territory.²⁸ Student governments at over 50 universities across the country have passed resolutions and referenda calling on their schools to divest from companies

²⁷ Anna Baltzer, *Churches are Standing Up!*, US CAMPAIGN FOR PALESTINIAN RIGHTS (July 23, 2017), <https://uscpr.org/churches-are-standing-up/>; Annie Robbins, *In overwhelming vote, leading Lutheran branch calls on US to cut off aid to Israel*, MONDOWEISS (Aug. 12, 2016), <https://mondoweiss.net/2016/08/lutherans-say-cut-off-aid-toisrael/>.

²⁸ Marjorie Cohn, *Israel Hits Back Against Boycott*, HUFFINGTON POST (Mar. 30, 2017), https://www.huffingtonpost.com/entry/israel-hits-back-against-boycott-us_58dd41ffe4b0fa4c095986fa (last updated Apr. 3, 2017); Gabrielle Coppola, *Soros Fund No Longer Holds Shares of SodaStream*, BLOOMBERG.COM (Aug. 4, 2014), <https://www.bloomberg.com/news/articles/2014-08-04/soros-fund-no-longer-holds-shares-of-sodastream>; *Bill Gates Sells Shares in U.K. Firm Linked to Israeli Security Services*, HAARETZ (May 31, 2014), <https://www.haaretz.com/bill-gates-sells-shares-in-g4s-1.5250315>; Ora Coren, *TIAA-CREF Confirms Africa Israel Divestment*, HAARETZ (Sept. 13, 2009), <https://www.haaretz.com/1.5491792>.

that are complicit in Israel’s human rights abuses.²⁹ Acclaimed writers, artists, and professional athletes such as Natalie Portman, Lorde, Lana del Rey, Lauren Hill, Cornel West, Roger Waters, Michael Bennett, and others have endorsed or participated in a cultural boycott of Israel—or refused to travel there—on account of its human rights violations.³⁰ United Electrical, Radio and Machine Workers of America (UE), a member-run union representing 30,000 workers, endorses BDS.³¹ In 2015, a “Black Solidarity Statement with Palestine” endorsed BDS and was signed by over 1,000 individuals and nearly 50 Black-led organizations.³² Archbishop Emeritus and 1984 Nobel Peace Prize Winner Desmond Tutu was a longtime vigorous supporter of BDS, having recognized that it falls within the social justice protest tradition of the South African anti-apartheid movement.³³

²⁹ See *US Campus Victories in the Boycott, Divestment, & Sanctions Movement*, NAT’L STUDENTS FOR JUSTICE IN PALESTINE, <https://www.nationalsjp.org/bds-victories> (last visited June 21, 2022).

³⁰ Dana Kennedy, *Is Natalie Portman’s Israel Protest a Tipping Point?*, DAILY BEAST (Apr. 21, 2018), <https://www.thedailybeast.com/is-natalie-portmans-israel-protest-a-tipping-point>; Letter to the Editor, *Lorde’s artistic right to cancel gig in Tel Aviv*, THE GUARDIAN (Jan. 5, 2018), <https://www.theguardian.com/music/2018/jan/05/lordes-artistic-right-to-cancel-gig-in-tel-aviv>; August Brown, *Lauren Hill cancels Israel concert after bungled Nigeria date*, L.A. TIMES (May 5, 2015), <https://www.latimes.com/entertainment/music/posts/la-et-ms-laury-n-hill-cancels-israel-concert-20150505-story.html>; Steve Almasy, *Michael Bennett boycotts trip, says he won’t be used by Israel*, CNN (Feb. 12, 2017), <https://www.cnn.com/2017/02/12/middleeast/nfl-players-boycott-israel-trip/index.html>.

³¹ Press Release, UE Endorses BDS Movement for Peace and Justice in Israel and Palestine, UE UNION (Sept. 1, 2015), <https://www.ueunion.org/political-action/2015/BDS>.

³² *2015 Black Solidarity Statement with Palestine*, BLACKFORPALESTINE.COM, <http://www.blackforpalestine.com/read-the-statement.html> (last visited June 21, 2022).

³³ *Tutu: Israel’s Humiliation of Palestinians ‘Familiar to Black South Africans,’ supra* note 17.

Increased advocacy in support of Palestinian rights has been met with aggressive efforts to suppress such speech, often at the urging of the Israeli government and Israel-aligned private groups.³⁴ Anti-boycott legislation like Chapter 2271 is one of many tools intended to discourage and stop criticism of Israel's treatment of Palestinians. From 2014 to 2021, Palestine Legal responded to nearly 2,000 incidents of censorship, punishment, and other burdening of advocacy for Palestinian rights.³⁵ This understates the phenomenon, as many individuals do not report incidents of suppression. These censorship campaigns affect a vast array of people, including school teachers, playwrights, artists, chefs, musicians, professors, students, and authors,³⁶ and frequently and disingenuously conflate

³⁴ See CTR. FOR CONSTITUTIONAL RIGHTS & PALESTINE LEGAL, *THE PALESTINE EXCEPTION TO FREE SPEECH: A MOVEMENT UNDER ATTACK IN THE US* (2015), available at <https://ccrjustice.org/the-palestine-exception>.

³⁵ *2021 Year-In-Review: Palestinian Uprising Generates Record Solidarity—And Fierce Backlash*, PALESTINE LEGAL, <https://palestinelegal.org/2021-report> (last visited June 21, 2022).

³⁶ *Id.*; THE PALESTINE EXCEPTION TO FREE SPEECH, *supra* note 34. See also, e.g., Jennifer Schuessler, *Jewish Center Faces Backlash After Canceling Play Criticized as Anti-Israel*, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/arts/jewish-center-faces-backlash-after-canceling-play-criticized-as-anti-israel.html>; Ben Norton, *Palestinian-American artist detained for sketches & Arabic writing falsely accused of terrorism by right-wing media*, SALON.COM (Dec. 22, 2015), <https://www.salon.com/2015/12/22/palestinian-american-artist-detained-for-sketching-in-arabic-falsely-accused-of-terrorism-by-right-wing-media/>; Leena Trivedi-Grenier, *The Tenacity of Chef Reem Assil*, VICE.COM (May 11, 2018), https://munchies.vice.com/en_us/article/mbkqv/the-tenacity-of-chef-reem-assil; Sam Sodomsky & Amy Phillips, *Lawmaker Calls for Lorde Florida Concert Cancellations Over Israel*, PITCHFORK.COM (Feb. 14, 2018), <https://pitchfork.com/news/lawmaker-calls-for-lorde-florida-concert-cancellations-over-israel/>; Alice Yin, *Evanston Public Library reinstates canceled book talk after accusations of censorship*, DAILY NW. (Aug. 4, 2014), <https://dailynorthwestern.com/2014/08/04/city/evanston-public-library-reinstates-canceled-book-talk-after-accusations-of-censorship/>.

criticism of Israel’s treatment of Palestinians with bias against Jewish people, as supporters of Texas’s law, including several *amici curiae*, do in the instant case.

The Israeli government and allied groups that seek to silence criticism of Israel have specifically targeted BDS and its supporters, in part because of the tactic’s growing effectiveness in mobilizing political pressure against Israel’s international law violations. They have thus leveraged considerable, coordinated resources to stifle BDS through legislative channels.³⁷ Referring to the growing support for Palestinian rights among college students, a lobbyist supporting anti-boycott bills highlighted both his disdain for such expressive activity and his goal to quash it: “While you were doing your campus antics, the grown-ups were in the state legislatures passing laws that make your cause improbable.”³⁸

Elected officials have readily admitted that they have introduced or passed anti-boycott measures because Israeli government officials have requested that they do so. During the signing of an anti-boycott executive order in November 2018, Kentucky governor Matt Bevin said that former Israeli Prime Minister Benjamin

³⁷ See, e.g., *The Lobby – USA, Episode 1*, YOUTUBE (Nov. 3, 2018), <https://www.youtube.com/watch?v=3ISjXhMUVKE> (statement of Yisrael Katz, Israeli Minister of Intelligence, “Israel must carry out a targeted civil thwarting of the leadership of BDS activists.”); Nathan Guttman, *Sheldon Adelson To Host Secret Anti-BDS Summit for Jewish Donors*, THE FORWARD (June 1, 2015), <https://forward.com/news/309227/sheldon-adelson-to-host-secret-anti-bds-summit-for-jewish-donors/>.

³⁸ *As BDS opponents move from campuses to state capitols, California is up next*, JEWISH NEWS SYNDICATE (Apr. 13, 2016), <https://www.jns.org/as-bds-opponents-move-from-campuses-to-state-capitols-california-is-up-next/>.

Netanyahu had personally lobbied for the order when Bevin had visited Israel.³⁹ Former New York governor Andrew Cuomo signed an anti-BDS executive order flanked by representatives of the Israeli government and the Israel lobby group AIPAC, among others.⁴⁰ Reportedly, “[i]n cooperation with Jewish and pro-Israeli organizations, the [Israeli foreign] ministry convinced several American states to pass legislation against the boycott of Israel.”⁴¹

Since 2014, thirty-four states have adopted laws that target boycotts for Palestinian rights. At least 344 bills and resolutions have been introduced in U.S. states, local governments, and Congress, targeting support for Palestinian rights generally.⁴² These include resolutions condemning BDS because “Israel has been granted her lands by a promise made by God to Abraham . . . (Genesis 12:1-3)” or

³⁹ “While we were having that conversation he was talking to me about the significance of this and asking me if I would do the very thing that we are here to do today.” Ryland Barton, *Bevin To Require State Contractors Promise They Don’t Boycott Israel*, 89.3 WPFL NEWS LOUISVILLE (Nov. 18, 2018), <https://wfpl.org/bevin-to-require-state-contractors-promise-they-dont-boycott-israel/>.

⁴⁰ Exec. Order No. 157 (N.Y. June 5, 2016), https://www.governor.ny.gov/sites/default/files/atoms/files/EO_157_new.pdf; Philip Weiss & Adam Horowitz, *Flanked by AIPAC and Israeli consul, Cuomo signs anti-BDS order*, MONDOWEISS (June 6, 2016), <https://mondoweiss.net/2016/06/flanked-israeli-consul/>.

⁴¹ Ali Abunimah, *Israel “quietly” pushed for anti-BDS legislation in US, UK*, ELECTRONIC INTIFADA (Feb. 24, 2016), <https://electronicintifada.net/blogs/ali-abunimah/israel-quietly-pushed-anti-bds-legislation-us-uk>.

⁴² *Legislation targeting advocacy for Palestinian rights: Statistics*, supra note 6. This chart illustrates the number of bills and executive orders introduced versus those that are in effect at the state and federal level. It does not include resolutions, affirmative legislation, or local bills. For more on the scope of the website, see *Methodology*, PALESTINE LEGAL, <https://legislation.palestinelegal.org/resources-action/methodology/> (last visited June 21, 2022).

bills that would have defunded entire state university systems if professors used school funding for membership in academic associations that boycotted Israel.⁴³

This remarkably broad and fast legislative activity is a direct result of the immense and heavily funded lobbying campaign to shield Israel from international scrutiny for its human rights violations.⁴⁴ In addition, governors from all fifty states joined the American Jewish Committee’s “Governors United Against BDS” campaign, which “reject[s] efforts to demonize and delegitimize Israel.”⁴⁵ Governor Abbott is not only one of the “Governors United Against BDS,” but also a co-chair.⁴⁶ The campaign was not “Governors Against Antisemitism or Anti-Israelism,” but names the BDS movement specifically.

Numerous politicians have been candid about the goals of anti-BDS legislation, acknowledging their intent to chill boycotts for Palestinian rights. Before authoring Chapter 2271, Texas State Representative Sarah Davis introduced a resolution condemning “[t]he dramatic increase in BDS campaign activities on

⁴³ H.R. Con. Res 6005, 95th Leg., Reg. Sess. (S.D. 2020); Assemb. B. 8392A, 2013-14 Leg., Reg. Sess. (N.Y. 2014).

⁴⁴ *How the Battle Over Israel and Anti-Semitism is Fracturing American Politics*, *supra* note 2.

⁴⁵ *Governors Against BDS*, AM. JEWISH COMM., https://www.ajc.org/sites/default/files/pdf/2017-09/GOVERNORS_AGAINST_BDS_STATEMENT.PDF (last visited June 21, 2022); Press Release, Am. Jewish Comm., *50 U.S. Governors Join AJC Initiative to Support Israel, Fight BDS*, PRNEWSWIRE.COM (May 17, 2017), <https://www.prnewswire.com/news-releases/50-us-governors-join-ajc-initiative-to-support-israel-fight-bds-300459614.html>.

⁴⁶ *Governors United Against BDS*, AM. JEWISH COMM., <https://www.ajc.org/governors> (last visited June 21, 2022).

college campuses around the country.”⁴⁷ Former New York Assemblyman Dov Hikind described the chilling effect of the New York anti-boycott Executive Order as “absolutely great,” stating that it “meant the list was working exactly as [then-Governor] Cuomo intended.”⁴⁸ Washington State Senator Michael Baumgartner, in vowing to introduce a bill that would prohibit public and private universities that receive state funding from participating in boycotts of Israel, was explicit that his intention was to “prohibit” BDS and “say it is illegal and that way I can just shut down these conversations.”⁴⁹

Several anti-boycott bills have also been introduced in Congress, the most draconian of which could have punished Americans with 20-year prison sentences for violations. The federal Israel Anti-Boycott Act bill, which has been introduced over multiple sessions and failed to pass, would subject participants of boycotts fostered or imposed by the United Nations or the European Union to exorbitant criminal fines.⁵⁰ Importantly, these anti-boycott laws have become templates to

⁴⁷ H.R. 2505, 84th Leg., Reg. Sess (Tex. 2015).

⁴⁸ Conor Skelding, *Cuomo quietly releases Israel-boycott opposition list, perplexing targeted companies*, POLITICO (Dec. 9, 2016), <http://www.politico.com/states/new-york/city-hall/story/2016/12/muted-release-of-and-mixed-reaction-to-cuomos-bds-blacklist-107815>.

(According to Hikind, “the point is being made . . . By doing this, in a sense, anyone who wants to participate in a BDS thing will think ten times . . . Who in New York would want to participate with all the focus and all the attention? They wouldn’t be able to do business in New York.”)

⁴⁹ Dyer Oxley, *Senator: Colleges are being used as ‘politically-correct batons,’* MYNORTHWEST.COM (Jan. 2, 2017), <http://mynorthwest.com/500618/senator-baumgartner-bds-bill>.

⁵⁰ Israel Anti-Boycott Act, H.R. 6940, 117th Cong. (2022).

target other boycotts of socially harmful industries, such as the fossil fuel and gun industries, with Texas leading the way in enacting such laws that condition state funding on pledges not to boycott these industries.⁵¹

B. Anti-BDS Laws Have Chilled and Punished Speech Supporting Palestinian Rights.

Anti-BDS laws like Chapter 2271 have tangible consequences beyond the direct effects of denying contracts and compelling speech. Musicians, teachers, students, professors, and grassroots activists have reported ways that anti-boycott laws have been used to threaten their careers and educations and to condition broad swaths of activity on pledges of allegiance that approach loyalty oaths routinely administered—and struck down⁵²—in the 1960s. Based on a mistaken application of H.B. 89, hurricane victims in Dickinson, Texas were required to pledge not to boycott Israel as a condition of receiving relief aid.⁵³ There is no telling how many other mistaken applications of the law there have been, or how many people have been chilled from expressing their views merely because of the existence of Chapter 2271.

⁵¹ Alex Kane, *What the Fossil Fuel Industry Learned from Anti-BDS Laws*, JEWISH CURRENTS (Apr. 4, 2022), <https://jewishcurrents.org/what-the-fossil-fuel-industry-learned-from-anti-bds-laws>; Emily Hernandez, *Texas warns firms they could lose state contracts for divesting from fossil fuels*, TEX. TRIB. (Mar. 16, 2022), <https://www.texastribune.org/2022/03/16/texas-fossil-fuel-divestment-ban-inquiry/>.

⁵² See, e.g., *Elfbrandt v. Russell*, 384 U.S. 11 (1966); *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967); *Whitehill v. Elkins*, 389 U.S. 54 (1967).

⁵³ Kyle Swenson, *This Texas town offers hurricane relief — if your politics are right*, WASH. POST (Oct. 20, 2017), <https://www.washingtonpost.com/news/morning-mix/wp/2017/10/20/texas-town-makes-hurricane-harvey-aid-applicants-pledge-not-to-boycott-israel/>.

In 2017, the Nassau County Attorney in New York threatened to take legal action if a local venue did not cancel performances by Pink Floyd co-founder Roger Waters because of his publicly professed support for BDS, citing the county's anti-boycott ordinance.⁵⁴ The concerts were allowed to proceed after lawyers intervened.⁵⁵ Florida lawmakers invoked their state's anti-boycott law in pushing for the cancellation of Grammy Award winner Lorde's concerts in 2018 after she refused to perform in Israel, citing support for the boycott movement.⁵⁶

Palestine Legal has received reports from individuals in California, Texas, Ohio, and Washington who lost contracts, believed they lost contracts, or declined or were denied payment because of their support for BDS. Students, professors and speakers have reported being questioned by administrators or student governments

⁵⁴ Robert Brodsky, *Officials want Nassau Events to cancel Roger Waters concert*, NEWSDAY (July 11, 2017), <https://www.newsday.com/long-island/nassau/some-officials-want-nassau-events-to-cancel-waters-concert-1.13795104>; Cathryn J. Prince, *Nassau county executive attempts to sever stadium contract with Waters*, TIMES OF ISR. (July 24, 2017), <https://www.timesofisrael.com/nassau-county-executive-attempts-to-sever-stadium-contract-with-waters/>.

⁵⁵ Letter from Susan Gottehrer, Nassau Cnty. Chapter Dir., Zachary Ahmad, Policy Counsel & Philip Desgranges, Staff Att'y, NYCLU to Carnell Foskey, Nassau Cnty. Att'y & Edward Mangano, Nassau Cnty. Exec. (Sept. 11, 2017), *available at* https://www.nyclu.org/sites/default/files/field_documents/bds_letter_final.pdf; Jake Offenhartz, *Roger Waters Shows Will Go On Despite Nassau County Anti-BDS Law*, GOTHAMIST (Sept. 13, 2017), http://gothamist.com/2017/09/13/roger_waters_nassau.php.

⁵⁶ Colin Wolf, *Lawmakers are trying to cancel Lorde's upcoming Florida shows because of her stance on Israel*, ORLANDO WEEKLY (Feb. 8, 2018), <https://www.orlandoweekly.com/music/lawmakers-are-trying-to-cancel-lordes-upcoming-florida-shows-because-of-her-stance-on-israel-10627952>; Nadeem Muaddi, *Lorde cancels Israel concert amid calls for cultural boycott*, CNN (Dec. 27, 2017), <https://www.cnn.com/2017/12/25/entertainment/lorde-concert-israel/index.html>.

about whether it was lawful to allow a speaker to give a talk supportive of BDS—or whether a speaker who publicly supports BDS and was brought to lecture about a different topic was allowed to speak at all.

At Indiana University, the student government, citing Indiana’s anti-boycott law, passed a resolution prohibiting the university and all of its divisions from “hosting lecturers, events, and demonstrations which incorporate speakers and participants who have advocated or supported” BDS.⁵⁷ The resolution would have also prohibited speakers who “previously advocated for the BDS movement even if the BDS movement is not the topic of the lecture.”⁵⁸

Anti-BDS laws have been misused, often intentionally, in order to censor people or scare them away from engaging in boycotts for Palestinian rights or even supporting Palestinian freedom more generally. In September 2017, over thirty New Yorkers received messages citing *failed* New York anti-BDS legislation threatening “legal proceedings” if they did not “cease and desist” from supporting BDS.⁵⁹ Investigative reporters at *The New Yorker* later discovered that this scare campaign

⁵⁷ Resolution to Prevent Anti-Semitism on Campus, Cong. Res. No. 18-19-12, Indiana Univ. Student Cong. (Nov. 2, 2018) (on file with Palestine Legal).

⁵⁸ *Id.* The student government president vetoed the resolution. Aaron Bandler, *Indiana University Student President Vetoes Resolution Condemning Pro-BDS Speaker*, JEWISH J. (Nov. 9, 2018), <https://jewishjournal.com/news/nation/241792/indiana-university-student-president-vetoes-resolution-condemning-pro-bds-speaker/>.

⁵⁹ *Over 30 New York Scholars and Activists Spied on by Former Mossad Agents*, PALESTINE LEGAL (Feb. 28, 2019), <https://palestinelegal.org/news/2019/2/28/over-30-new-york-scholars-and-activists-spied-on-by-former-mossad-agents>.

was the work of ex-Mossad agents.⁶⁰ In May 2019, an occupational speech therapist at a school in Queens, New York was told by the principal that he had to remove several items relating to Palestine from his workspace and to stop wearing a Jewish Voice for Peace T-shirt on the mistaken belief that these items violated New York State Executive Order No. 157, which directs the State of New York to divest from companies that engage in BDS.⁶¹ Only after Palestine Legal and the Center for Constitutional Rights intervened did New York City’s Department of Education agree that the principal’s reliance on the anti-BDS order “was misguided.”⁶²

In 2020, a professional association received a letter from an attorney with the Lawfare Project, a pro-Israel group that advocates for anti-BDS laws, incorrectly claiming that because one of its staff members had posted statements supporting the boycott of Israel, North Carolina’s anti-BDS law had been “implicate[d]” and “may expose boycott participants to civil liability.”⁶³ North Carolina’s anti-BDS law mirrors Chapter 2271 and does not bar associations (or their employees) from expressing support for boycotting Israel over its human rights abuses or expose them to “civil liability.”⁶⁴ Nonetheless, the Lawfare Project demanded the association

⁶⁰ Adam Entous & Ronan Farrow, *Private Mossad for Hire*, NEW YORKER (Feb. 11, 2019), <https://www.newyorker.com/magazine/2019/02/18/private-mossad-for-hire>.

⁶¹ *New York Department of Education: Stop Censoring Pro-Palestine Educator*, PALESTINE LEGAL (Dec. 2, 2019), <https://palestinelegal.org/news/2019/12/2/nyc-department-of-education-stop-censoring-pro-palestine-educator>.

⁶² *Id.*

⁶³ Letter from Lawfare Project (2020) (on file with Palestine Legal).

⁶⁴ N.C. GEN. STAT. §§ 147-86.80-146.86.83.

“issue a clear and decisive statement” that it supported conferences in Israel “within 30 days” of the letter’s date.⁶⁵

Although none of these laws should prevent the type of speech activity described in these incidents—poetry readings, starting a student group, singing, wearing a T-shirt, a talk on human rights, an employee advocating for the boycott—confusion over their scope or deliberate misapplication did ultimately punish, or attempt to punish, speakers supporting Palestinian rights. They are part of a tapestry of laws of which Chapter 2271 is a central piece, designed to silence expressive advocacy that challenges the injustices of Israeli state policy.

CONCLUSION

This Court should uphold the decision of the district court granting Plaintiff-Appellee’s Motion for Preliminary Injunction.

Dated: June 22, 2022

Respectfully submitted,

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⁶⁵ Letter from Lawfare Project, *supra* note 63.

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system, and that service to all registered CM/ECF users appearing in the case will be accomplished by the CM/ECF system.

Dated: June 22, 2022

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Dated: June 22, 2022

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