

# Zachor Legal Files Amicus Brief Urging an En Banc Rehearing of 8th Circuit's Decision Regarding Arkansas' Anti-BDS Law

*Zachor will continue to support all states with anti-BDS legislation (currently more than 30) as they confront the spread of antisemitism promoted by BDS.*



BOZEMAN, MONTANA, USA, April 21, 2021 /EINPresswire.com/ -- [Zachor Legal Institute](#) filed an [amicus brief](#)

with the Eight Circuit Court of Appeals supporting a petition by the State of Arkansas asking for an En Banc Rehearing of a panel's decision on Arkansas' Anti-BDS Law.

In addition, Zachor's strategic objective of researching and publishing legal scholarship is



If the Eighth Circuit's decision stands, all state antidiscrimination laws will be in jeopardy. We strongly urge an En Banc review by the Eighth Circuit."

*Marc Greendorfer, President of Zachor Legal Institute*

producing dividends in this case. Amicus briefs from a number of parties cited to law review articles published by Zachor, including:

- Marc A. Greendorfer, The Inapplicability of First Amendment Protections to BDS Movement Boycotts, 2016 CARDOZO L. REV. DE NOVO 112; - [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2676307](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2676307)
- Marc A. Greendorfer, The BDS Movement: That Which We Call a Foreign Boycott, by Any Other Name, Is Still

Illegal, 22 ROGER WILLIAMS U. L. REV. 1 (2017); -

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2531130](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2531130) and

- Marc A. Greendorfer, Boycotting the Boycotters: Turnabout is Fair Play under the Commerce Clause and the Unconstitutional Conditions Doctrine, 40 CAMPBELL L. REV. 29 (2018) - [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3032646](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3032646).

Among Zachor Legal Institute's areas of focus is confronting discriminatory boycotts that have been promoted by a group known as the Boycott, Divest and Sanction ("BDS") movement. The [BDS movement has deep, extensive ties to designated foreign terrorist](#) organizations, including

Hamas and the Popular Front for the Liberation of Palestine and has infiltrated a number of organizations to spread a discriminatory agenda aimed at Jews and companies that do business with and in Israel. The ultimate goal of BDS is to disenfranchise Jews, the indigenous people of the land of Israel, and ethnically cleanse Israel. BDS activity has now been embraced by far left extremists as well as white supremacist groups, united in their promotion of antisemitism.

On February 12, 2021, a divided three judge panel of the Eighth Circuit Court of Appeals issued an opinion reversing a denial of a preliminary injunction sought by opponents of an Arkansas law restricting when the state can do business with those engaging in discriminatory boycotts (19-1378 Arkansas Times LP v. Mark Waldrip, et al.).

The lower court properly found that the Arkansas law, Act 710, a narrowly tailored and common sense law designed to ensure that the state did not fund antisemitic boycotts while not affecting the right of individuals to speak on the topic, complied with the First Amendment. Two of the three judges on the Eighth Circuit panel misinterpreted the text of Act 710 to find that it was vague while the third judge found the text to not only be specific, but also argued that the lower court's decision should have been upheld.

The lower court engaged in a reasoned analysis of existing First Amendment case law on boycott activity and found that the case relied upon by BDS activists, NAACP v. Claiborne Hardware Co., did not protect the types of boycotts promoted by BDS and subject to Act 710, which are secondary boycotts relating to foreign conflicts.

As Zachor Legal has pointed out in its scholarship and court briefs, Claiborne is limited to protest activity that relates to the 14th Amendment rights of those engaging in the boycotts, such as African Americans protesting local officials who promoted a pattern of race based discrimination. Act 710 does not touch upon the right of individuals to protest in support of their 14th Amendment rights. Instead, it simply prevents the state from becoming entangled in foreign disputes.

The case that controls the type of boycotts regulated by Act 710, as the lower court confirmed in denying the request to enjoin the enforcement of Act 710, is International Longshoremen's Ass'n v. Allied International. In International Longshoremen's, U.S. workers who opposed the Soviet Union's actions in Afghanistan engaged in a secondary boycott against the Soviet Union and the Supreme Court found that their boycott activity was not protected by the First Amendment.

BDS boycotts are precisely analogous to the boycotts in International Longshoremen's, as those engaging in BDS activity in the United States are engaging in a secondary boycott targeting a foreign nation, with no Fourteenth Amendment rights of the boycotters implicated. The Eighth Circuit never reached the question of secondary boycott activity unrelated to the rights of those boycotting, even though this was the core First Amendment question in the case. Instead, the court found three words in Act 710 used to define discriminatory boycotts subject to the law to be vague and on that basis, reversed the lower court.

Zachor had previously submitted an amicus brief in the original Eighth Circuit case and will continue to support the state of Arkansas, and more than half of all other U.S. states, as they confront the spread of anti-Semitism promoted by BDS.

Marc Greendorfer, President of Zachor Legal, said: "If the Eighth Circuit's decision stands, all state antidiscrimination laws will be in jeopardy. We strongly urge an En Banc review by the Eighth Circuit."

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