No. 22-20047

In the United States Court of Appeals for the Fifth Circuit

A & R ENGINEERING AND TESTING, INC.,
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

AMICUS BRIEF OF THE STATES OF ARIZONA, ARKANSAS, FLORIDA, GEORGIA, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, VIRGINIA, UTAH, AND WEST VIRGINIA

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Dated: April 21, 2022

CERTIFICATE OF INTERESTED PARTIES

The amici curiae for this brief are exclusively governmental parties, and therefore not required to furnish a certificate of interested parties under Fifth Circuit Rule 28.2.1. The undersigned counsel of record nonetheless certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.[1]

1. The States of Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, South Carolina, South Dakota, Virginia, Utah, and West Virginia.

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[1] Because the States are permitted to file amicus briefs without consent under FRAP 29(a)(2), they are not subject to FRAP 29(a)(4)(E). Nonetheless, the Amici States declare that this brief was authored entirely by counsel for the Amici States, and no party or person contributed money that was intended to fund preparation or submission of this brief. The Interests of Amici section, *infra* at 1, sets forth the identity of the Amici States, as well as their interests and authority. *See* FRAP 29(a)(4)(E).

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April 21, 2022

s/ Drew C. Ensign
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Greendorfer, Marc A., *The BDS Movement: That Which We Call A Foreign Boycott, By Any Other Name, Is Still Illegal*, 22 Roger Williams U. L. Rev. 1, 29, 37 (2017) 14

INTERESTS OF AMICI

The States of Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, South Carolina, South Dakota, Utah, Virginia, and West Virginia ("Amici States" or "States") have significant interests here. In particular, Amici States all have compelling interests in preventing invidious discrimination, and have furthered that compelling interest by imposing conduct-based regulations on government contractors. Moreover, 32 other states— including several of amici—have enacted statutes or executive orders similar to the Texas statute (the "Act" or "Texas Act") challenged here. See Appendix A. And many of those states' statutes specifically have the "other actions" language which forms the crux of the district court's erroneous reasoning. See Appendix B.

More generally, all states "have an interest, as sovereigns, in exercising the power to create and enforce a legal code." *Alaska v. U.S. Dep't of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989) (quotation marks omitted). Thus, "the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 138 S. Ct. 2305,

2324 n.17 (2018). Because this case might establish adverse precedent that could threaten their laws, Amici States have an interest in this Court's resolution of the First Amendment issues presented here.

ARGUMENT

The district court's opinion turns venerable and fundamental principles of statutory interpretation on their head: instead of adopting the best interpretation of a statute that raises no constitutional issues (even on its own reasoning), the district court opted instead for a dubious reading precisely so that it could call the statute's constitutionality into question. These errors warrant reversal.

In particular, the district court's interpretation of "other actions" violates the canons of *noscitur a sociis* and *ejusdem generis*. Nor are constitutional ways of reading "other actions" difficult to envision: the Supreme Court's unanimous decision in *International Longshoremen's Assoc., AFL-CIO v. Allied Int'l, Inc.*, 456 U.S. 212 (1982), provides one such obvious example, which the district court simply ignored.

The district court's reasoning unjustifiably threatens the laws of many other states. Thirty-three states have restricted state subsidizing of boycotts of Israel by enacting similar restrictions on public

contractors. *See* Appendix A. And 25 states specifically have equivalent "other actions" language that the panel seized upon. *See* Appendix B. All of those states' laws are called into question by the district court's reasoning, and for no good reason.

The importance of the issues presented is underscored by the States' compelling interests in prohibiting discrimination. Yet the district court gave scant attention to those interests. Indeed, the Texas Act is plainly the kind of anti-discrimination measure that courts have consistently upheld against First Amendment challenges, even where (unlike here) such laws burden expression/association. And that's because such laws are both content- and viewpoint-neutral.

This Court should reverse.

I. The District Court's Reasoning Turns Constitutional Avoidance On Its Head

The district court overwhelmingly relied upon reading the "other actions" language of the Act to create the purported constitutional infirmities that its opinion recognized. But in doing so the district court violated venerable canons of construction: in particular *noscitur a sociis* and constitutional avoidance. Notably, a panel of the Eighth Circuit made this same error—which led to the Eighth Circuit properly

rehearing the case en banc. *See Arkansas Times LP v. Waldrip*, 988 F.3d 453, 464-67 (8th Cir. 2021) *rehearing en banc granted* (8th Cir. June 10, 2021).

"'The canon, *noscitur a sociis*, reminds us that 'a word is known by the company it keeps,' and is invoked when a string of statutory terms raises the implication that the 'words grouped in a list should be given related meaning.'" *S.D. Warren Co. v. Me. Bd. of Env't. Prot.*, 547 U.S. 370, 378 (2006) (cleaned up) (citations omitted). The obvious import of that canon, and the related *ejusdem generis* canon, is that the "other actions" language of the Act must be read to be of a similar kind as the preceding enumerated *actions*—all of which involve *boycotting conduct*—not speech.

This straightforward reading would present no constitutional problems, because all of the boycotting conduct at issue here would fall squarely within what the Supreme Court unanimously recognized was outside the scope of the First Amendment in *Rumsfeld v. FAIR*, 547 U.S. 47 (2006). Yet the district court erroneously rejected that reasonable interpretation that avoided any First Amendment concerns and instead adopted one that *created* constitutional problems.

In so doing, district court also violated the canon/doctrine of constitutional avoidance, under which it is "incumbent upon [courts] to read the statute to eliminate those [constitutional] doubts so long as such a reading is not plainly contrary to the intent of [the enacting legislature]." *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 78 (1994). Here there was an obvious reading of the Act that constitutional avoidance should have counseled in favor of adopting. Indeed, even on the district court's own telling, the residual clause only "*could* include conduct protected by the First Amendment." ROA.510 (emphasis added). Because it was eminently possible to read the Act in a way that did not raise First Amendment concerns, the doctrine of constitutional avoidance mandated such a reading.

The district court refused to apply that doctrine, cladding its actions in faux judicial modesty: "This Court is constrained from re-writing the statute." ROA.511. But needlessly creating constitutional problems that the court both could—and was duty bound to—*avoid* is hardly an act of judicial restraint.

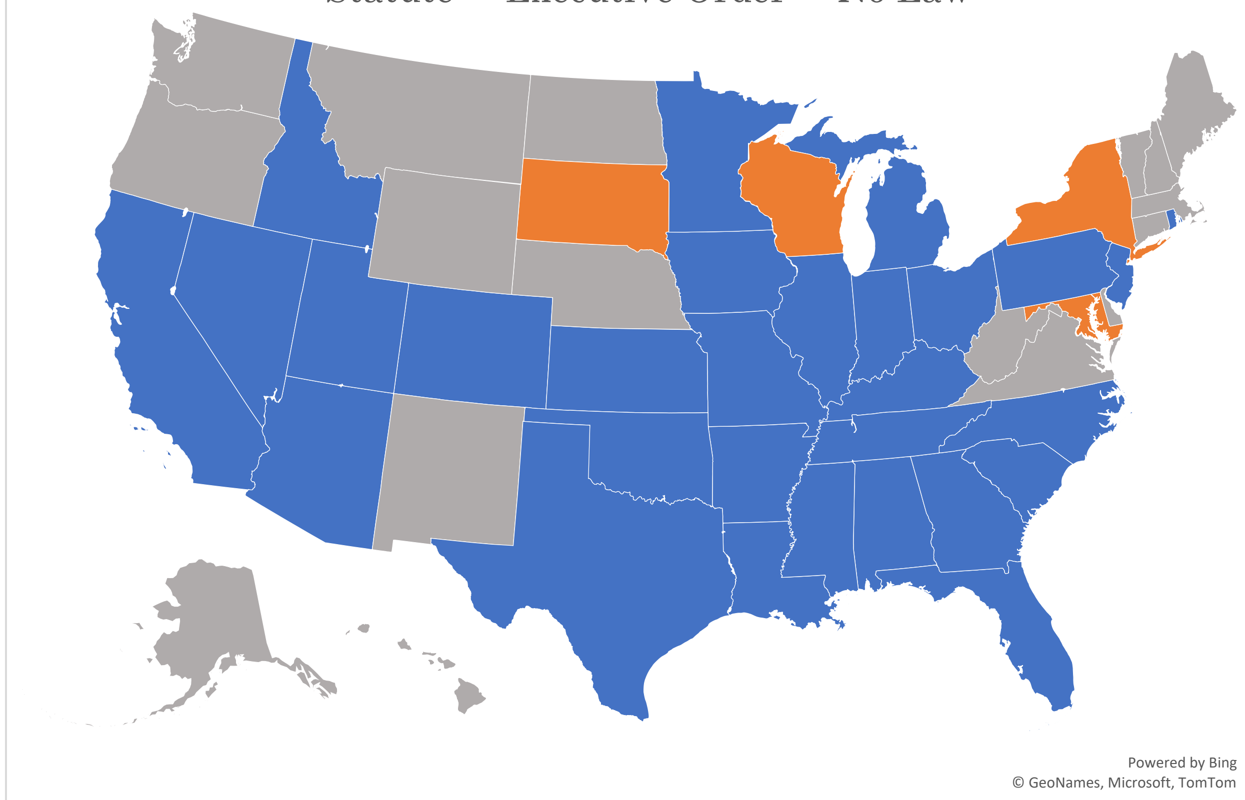
One obvious example of a constitutional application of the residual clause is provided by the Supreme Court's decision in *Longshoremen*. In

that case, a union refused to offload cargoes from the Soviet Union. 456 U.S. at 214. And at a minimum, the conduct in that case was the sort of closely aligned "other actions" that the Act is designed to capture. And the Supreme Court in *Longshoremen* unanimously held that such actions were not a "protected activity under the First Amendment." *Id.* at 226-27.

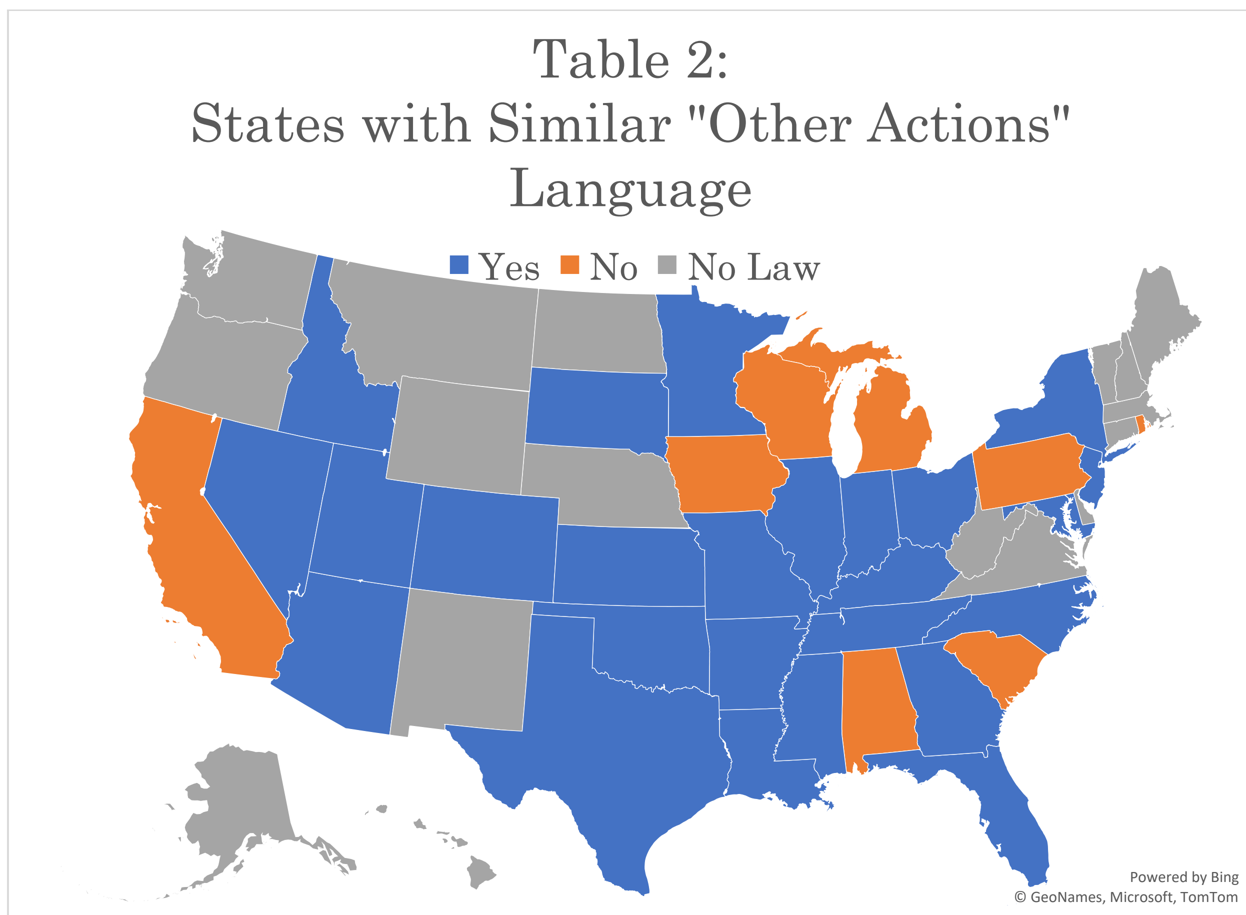
II. The District Court's Holding, If Accepted, Would Threaten Similar Laws Of Many Other States

The potential mischief that the district court's reasoning could cause is substantial—demonstrating the exceptional importance of the issues presented to *many* states besides Texas.

Nearly two-thirds of all states—33 in all—have statutes or executive orders like Texas's. *See* Appendix A. All of them would be potentially imperiled by an affirmance of the district court's opinion. Notably, parties raising similar claims have brought equivalent suits in Arizona, Arkansas, Georgia, Kansas, and Maryland. There is no reason to doubt that an affirmance against Texas here could be weaponized against its 32 similarly situated sister states.



The district court's reasoning is particularly problematic for states with similar "other actions" language—which number 25 in total. *See* Appendix B. As explained above, that language raises no actual constitutional issues. *Supra* Section I. But many states could easily be faced with protracted litigation if this Court were to affirm.



III. The Texas Act Serves The State's Compelling Interest In Denying State Subsidies To Discriminatory Conduct

In holding that the residual clause violated the First Amendment, the district court skipped over a critical part of the requisite constitutional analysis: Texas's compelling interest in prohibiting primary discrimination against Israelis and secondary discrimination against those doing business with Israelis. Even if the district court were correct—*FAIR* notwithstanding—that the conduct regulated by the Act *implicated* the First Amendment, that would only get Plaintiff

to consideration of Texas's compelling interest in prohibiting discrimination. Yet the district court short circuited the analysis by jumping straight from its conclusion that the residual clause fell within the ambit of the First Amendment's protections to holding that "Defendants do not have a legitimate interest that outweighs the Plaintiff's First Amendment rights." ROA.518.

But the Texas Act—like virtually every anti-discrimination measure that has ever come before it—is both content- and viewpoint-neutral. Plaintiff may disagree with the Texas Legislature's choice to protect Israelis and those doing business with them from economic discrimination. And it is entirely free to use its First Amendment rights to call for repeal, donate to candidates that support its desired legislative initiatives, and speak to its heart's content on any and all such issues. But the First Amendment does not provide Plaintiff with a heckler's veto that it may exercise against the Act.

A. The Texas Act Properly Advances The State's Compelling Interest In Prohibiting Discrimination

Texas—like all of its sister states—has a compelling interest in prohibiting discrimination, which the district court gave only the most

fleeting attention to (in balancing the equities). ROA.519. Plaintiff's position appears to be that the Texas Act is not a valid anti-discrimination measure because they think it is "underinclusive" and is "not content neutral." D. Ct. Doc. 19 at 5. Plaintiff further contends that the Act "'was not enacted to prevent discrimination on the immutable characteristic of national origin.'" *Id.* (citation omitted). That reasoning is deeply flawed.

Plaintiff's protestation conflicts with an intuitively obvious, indeed virtually self-evident fact: targeting a particular group (and those associating with them) for the intentional infliction of economic harm *is discrimination*, *by definition*. Plaintiff attempts to cast the meting out of financial pain against a specific target group as something other than discrimination. That effort fails as a matter of logic and precedent.

Plaintiff does not appear to dispute that a business's refusal to hire African Americans (*i.e.*, a hiring boycott) would be textbook discrimination. But suppose instead the business refuses to purchase products from businesses owned by African Americans. Other parties raising similarly claims have suggested elsewhere that this is not discriminatory because it merely involves suppliers (rather than public

accommodations or employers).[2] But that merely changes the *target* of the discrimination, not the refusal's *discriminatory character*. *See*, *e.g.*, *Bains LLC v. Arco Products Co.*, 405 F.3d 764, 769-70 (9th Cir. 2005) (holding disparate treatment against Sikh-owned company in commercial transactions was actionable discrimination under 42 U.S.C. §1981).

Now substitute "Mexicans and Mexican-Americans" for "African Americans." That again merely changes the category of discrimination (nationality and ethnicity, instead of race), not the fundamental discriminatory character. *Lamarr-Arruz v. CVS Pharmacy, Inc.*, 271 F. Supp. 3d 646, 657 (S.D.N.Y. 2017) (maltreatment based on ethnicity and national ancestry is actionable discrimination under §1981). And, for most BDS boycotters, that is effectively what their boycotts are: *blanket and categorical* refusals to deal with *all Israelis*, based on nationality/national origin. Indeed, the Plaintiffs in the *Jordahl* case

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[2] *See*, *e.g.*, Plaintiffs' Answering Brief, *Jordahl v. Brnovich*, 2019 WL 296918, at 45-46 (9th Cir. No. 18-16896) (Jan. 17, 2019).

admitted as much: "the regular BDS boycott [is] of all of Israel" and is "boycott of all Israeli products."[3]

BDS boycotters thus select targets based solely on membership in a particular group (*i.e.*, Israelis), and nothing more. *Id.* The quintessential nature of those boycotts is *discriminatory*. And Texas may properly proscribe—or at least refuse to subsidize—such discrimination. *See*, *e.g.*, *Hishon v. King & Spalding*, 467 U.S. 69, 78 (1984) ("Invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but *it has never been accorded affirmative constitutional protections*." (quoting *Norwood v. Harrison*, 413 U.S. 455, 470 (1973)) (emphasis added); *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 13 (1988); *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 549 (1987).

To use a real-world example, AirBnB refused to do business with Israelis (but not Palestinians) in the West Bank, viewing it as occupied

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[3] *See* Excerpts of Record, *Jordahl*, at 177-80, 183-84 (plaintiffs' admission that "the regular BDS boycott [is] of all of Israel"), 218 ("boycott of all Israeli products").

territory.[4] It would, however, freely rent in Kashmir, Northern Cyprus, Western Sahara, and many other disputed/occupied territories.[5] But even though AirBnB expressly singled out Israelis for distinctly disfavored treatment, Plaintiff blinks reality by denying any discriminatory effect to that uniquely anti-Israeli policy. *See*, *e.g.*, *Dawson v. Steager*, 139 S. Ct. 698, 705 (2019) ("[D]iscrimination [is] something we've often described as treating similarly situated persons differently." (cleaned up)).[6]

Plaintiff also appears believe that because the Act does not track its conception of "national origin" it cannot constitute a valid anti-discrimination measure. Yet nothing about the First Amendment compels the States to mirror exactly the federal definitions as the

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[4] *See* Associated Press, *Airbnb plans to remove listings in Israeli West Bank settlements* (Nov. 29, 2018), https://www.nbcnews.com/news/world/airbnb-plans-remove-listings-israeli-west-bank-settlements-n938146.

[5] *Id.*

[6] AirBnB subsequently ceased its discriminatory policy as part of a settlement of lawsuits filed against it. *See* Airbnb News, *Update on Listings in Disputed Regions* (Apr. 9, 2019), https://press.airbnb.com/update-listings-disputed-regions/. But although that policy has been terminated, it was emblematic of the pervasive discriminatory effect inherent in boycotts of Israel while it was in effect.

exclusive categories of discrimination. Moreover, federal law recognizes that discrimination against Israelis/Jews takes on elements of race, nationality, and religion. *See*, *e.g.*, Greendorfer, Marc A., *The BDS Movement: That Which We Call A Foreign Boycott, By Any Other Name, Is Still Illegal*, 22 Roger Williams U. L. Rev. 1, 29, 37 (2017); *Sinai v. New England Tel. & Tel. Co.*, 3 F.3d 471, 474 (1st Cir. 1993) ("That Israel is a Jewish state, albeit not composed exclusively of Jews, is well established."). *Magana v. Commonwealth*, 107 F.3d 1436, 1446 (9th Cir. 1997) ("Clearly, the line between discrimination based on ancestry or ethnic characteristics, and discrimination based on place or nation of origin, is not a bright one. Often, the two are identical as a factual matter." (cleaned up) (citation omitted)).

But that blurring—and constellation—of biases typically involved in boycotts of Israel hardly immunizes them from regulation. The substantive character of the regulated boycotts of Israel is fundamentally *discriminatory* in nature, thus directly implicating States' compelling interests in prohibiting discrimination within their borders—as well as the much more limited action of merely *denying subsidies* to such discriminatory actions presented here.

B. The Texas Act Is Content- And Viewpoint-Neutral

Plaintiff's contention that the Texas Act is not a valid anti-discrimination measure appears to be premised on its contention that the Act is a content- or viewpoint-based regulation of speech. That premise fails for three reasons.

First, the Act here is no more (and indeed *less*) targeted at speech than the law in *FAIR*. The legislative history in *FAIR* confirmed that the Solomon Amendment was targeted at one—and only one—particular type of boycott and was designed to penalize those who engaged in it. *FAIR*, 547 U.S. at 57-58. But despite Congress's obvious targeting there, the Solomon Amendment was a "'neutral regulation.'" *Id.* at 67 (citation omitted); *accord Burt v. Gates*, 502 F.3d 183, 187 (2d Cir. 2007). And the Supreme Court held the Solomon Amendment was constitutional. So too is Texas's Act.

Second, the Texas Act applies to all boycotts of Israel, and is agnostic as to underlying motivation—*i.e.*, viewpoint. The Act thus applies to boycotts designed to protest Israel's settlement policies as too tough. It also applies equally to those boycotting Israel as being too soft

in not promoting settlement expansion. And it applies to those merely seeking to curry favor with anti-Semitic customers. The Act does not care *what message* a boycotter is trying to send—only what the boycott's *economic substance* is.

The district court's reliance on "Hassouna den[ying] any anti-Semitic intent and testif[ying] that he (and one presumes A&R as well) makes a distinction between the actions of individuals who are Jewish and the actions of the Israeli government" is thus irrelevant. ROA.517 Equally irrelevant is the district court's entirely gratuitous observation that "[t]his distinction is the same one voiced by the State Department and some Jewish groups"—implicitly signaling the district court's approval of the distinction. *Id.*

The Act is completely agnostic as to what Plaintiff's actual motivation was, and the district court should have been too. But the district court's reasoning betrays its apparent view that Plaintiff is engaged in a sort of "good" discrimination that Texas lacks the power to regulate. That reasoning—and not the Act—is the applicable viewpoint discrimination here.

Third, it is similarly well-established that anti-discrimination statutes generally "make[] no distinctions on the basis of the organization's viewpoint."' *Board of Directors of Rotary Int'l*, 481 U.S. at 549. Instead, "federal and state antidiscrimination laws … [are] *permissible content-neutral regulation[s]* of conduct." *Wisconsin v. Mitchell*, 508 U.S. 476, 487 (1993) (emphasis added). Indeed, even for a cable operator selecting what content to carry—undeniably expressive activity—mandating editorial decisions "free of discriminatory intent … has no connection to the viewpoint or content." *NAAAOM v. Charter Communications, Inc.*, 915 F.3d 617, 629-30 (9th Cir. 2019); *accord Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790, 801 (9th Cir. 2011).

Plaintiff attempts to escape this virtually unbroken line of precedents recognizing that anti-discrimination measures are typically content-/viewpoint-neutral by contending that the Act is "underinclusive"—presumably because it applies only to boycotts of Israel, and not other countries. But anti-discrimination laws have never been constitutionally suspect simply because they ban only a subset of discrimination. Congress may, for example, ban age discrimination only

against the old but not young in the Age Discrimination in Employment Act. *See* 29 U.S.C. §621. And that act has repeatedly survived constitutional challenge. *See*, *e.g.*, *EEOC v. Wyoming*, 460 U.S. 226 (1983). So too should the Act.[7]

More generally, such reasoning could upend federal sanctions law if accepted by this Court. If Plaintiff has a First Amendment right not to do business with Israel, why would it also not have a right to do business *with* countries like North Korea, Iran, Sudan, or Apartheid South Africa? Certainly, doing business with such countries involves far more noticeable conduct than refusing to do business with a country.

Plaintiff's arguments could thus upend sanctions law if adopted by this Court.

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[7] This is not to say that anti-discrimination statutes are categorically incapable of drawing content-based distinctions. Rather, they do not as a general matter, and further that the Texas Act here does not.

CONCLUSION

The Texas Act readily comports with the First Amendment and is a valid exercise of States' compelling interests in prohibiting discrimination and denying discriminatory actions public subsidization. If this Court reaches the constitutional merits, it should reverse the district court's conclusion that the residual clause is unconstitutional.

Dated: April 21, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,041 words, excluding the parts exempted by Rule 32(f); and (2) the typeface and type style requirements of Rule 32(a)(5) and Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word (the program used for the word count).

s/ Drew C. Ensign
Drew C. Ensign

CERTIFICATE OF SERVICE

I, Drew C. Ensign, hereby certify that I electronically filed the foregoing Brief of Amici Curiae States of Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, South Carolina, South Dakota, Utah, Virginia, and West Virginia in with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on April 21, 2022, which will send notice of such filing to all registered CM/ECF users.

s/ Drew C. Ensign
Drew C. Ensign

APPENDIX A:
STATES WITH SIMILAR STATUTES OR EXECUTIVE ORDERS

Alabama

- SB 81, passed and signed into law in 2016
- https://legiscan.com/AL/text/SB81/2016

Arizona

- HB 2617, passed and signed into law in 2016
- https://www.azleg.gov/legtext/52leg/2r/bills/hb2617p.pdf

Arkansas

- SB 513 passed and signed into law in 2017
- https://legiscan.com/AR/text/SB513/id/1551482

California

- AB 2844, passed and signed into law in 2016
- https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2844

Colorado

- HB 16-1284 passed and signed into law in 2016
- http://www.leg.state.co.us/clics/clics2016a/csl.nsf/fsbillcont3/FFEE6B72C4AB699C87257F240063F4A6?open&file=1284_rer.pdf

Florida

- SB 86 passed and signed into law in 2016
- https://www.flsenate.gov/Session/Bill/2016/0086
- SB 86 is amended by HB 545,
- https://www.flsenate.gov/Session/Bill/2018/545

Georgia

- SB 327 passed and signed into law in 2016
  https://legiscan.com/GA/text/SB327/id/1381586

Idaho

- SB 1086, signed and passed into law in 2021
- https://legiscan.com/ID/bill/S1086/2021

Illinois

- SB 1761 passed and signed into law in 2015
- http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=88&GA=99&DocTypeId=SB&DocNum=1761&GAID=13&LegID=&SpecSess=&Session=

Indiana

- HB 1378 passed and signed into law in 2016
- https://iga.in.gov/legislative/2016/bills/house/1378#document-916c8474

Iowa

- HF 2331 passed and signed into law in 2016
  https://www.legis.iowa.gov/docs/publications/LGE/86/HF2331.pdf

Kansas

- HB 2482 passed and signed into law in 2018
- http://www.kslegislature.org/li/b2017_18/measures/hb2482/
- HB 2482 amends Kansas' previous law, HB 2409
- http://kslegislature.org/li_2018/b2017_18/measures/documents/hb2482_enrolled.pdf

Kentucky

- Executive order 2018-905 signed November 18, 2018
  https://kentucky.gov/Pages/Activity-stream.aspx?n=KentuckyGovernor&prId=826
- SB 143, passed and signed into law in 2019
- https://legiscan.com/KY/bill/SB143/2019

Louisiana

- Governor Edwards signed an executive order in 2018
- https://www.doa.la.gov/osp/PC/EO_JBE_2018-15_BDS_Israel.pdf
- This EO is codified by HB 245, passed and signed into law in 2019
- http://www.legis.la.gov/legis/BillInfo.aspx?s=19rs&b=HB245&sbi=y

Maryland

- Governor Hogan signed an executive order in 2017
- https://content.govdelivery.com/attachments/MDGOV/2017/10/23/file_attachments/900819/Executive%2BOrder%2B01.01.2017.25.pdf

Michigan

- HB 5821 and HB 5822 were passed and signed into law in 2017
- https://trackbill.com/bill/mi-hb5821-state-financing-and-management-purchasing-prohibition-of-contracting-with-certain-discriminatory-businesses-that-boycott-certain-entities-provide-for-amends-sec-261-of-1984-pa-431-mcl-18-1261/1308784/

- https://trackbill.com/bill/mi-hb5822-state-financing-and-management-purchasing-prohibition-of-contracting-with-certain-discriminatory-businesses-provide-for-amends-1984-pa-431-mcl-18-1101-18-1594-by-adding-sec-241c-tie-bar-with-hb-582116/1308785/

Minnesota

- HF 400 passed and signed into law in 2017
- https://www.revisor.mn.gov/bills/bill.php?f=HF0400&y=2017&ssn=0&b=house

Mississippi

- HB 761 passed and signed into law in 2019
- http://billstatus.ls.state.ms.us/documents/2019/html/HB/0700-0799/HB0761IN.htm

Missouri

- SB 739 passed and signed into law in 2020
- https://www.senate.mo.gov/20info/pdf-bill/perf/SB739.pdf

Nevada

- SB 26 passed and signed into law in 2017
- https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?BillName=SB26

New Jersey

- S 1923, passed and signed into law in 2016
- https://legiscan.com/NJ/bill/S1923/2016

New York

- Governor Cuomo signed an executive order in 2016
- https://www.governor.ny.gov/news/no-157-directing-state-agencies-and-authorities-divest-public-funds-supporting-bds-campaign

North Carolina

- HB 161 passed and signed into law in 2017
- https://ncleg.net/Sessions/2017/Bills/House/HTML/H161v0.html

Ohio

- HB 476 passed and signed into law in 2016
- https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-HB-476

Oklahoma

- HB 3967 signed into law in 2020
- https://legiscan.com/OK/text/HB3967/id/2185979

Pennsylvania

- HB 2107 passed and signed into law in 2016
- http://www.legis.state.pa.us/cfdocs/billInfo/BillInfo.cfm?syear=2015&sind=0&body=H&type=B&bn=2107

Rhode Island

- H 7736 passed and signed into law in 2016
- http://webserver.rilin.state.ri.us/billtext16/housetext16/h7736.pdf

South Carolina

- H 3583 passed and signed into law in 2015
- http://www.scstatehouse.gov/sess121_2015-2016/prever/3583_20150319.htm

South Dakota

- Governor Noem signed an executive order in 2020
- https://sdsos.gov/general-information/executive-actions/executive-orders/assets/2020-01.PDF

Tennessee

- SB 1993 passed and signed into law in 2022
- https://publications.tnsosfiles.com/acts/112/pub/pc0775.pdf

Texas

- HB 89 passed and signed into law in 2017
- http://www.legis.state.tx.us/tlodocs/85R/billtext/html/HB00089I.htm
- HB 793 amends HB 89, passed and sign into law in 2019
- https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB793

Utah

- SB 186, passed and signed into law in 2021
- https://le.utah.gov/~2021/bills/static/SB0186.html#63g-27-101

Wisconsin

- Governor Walker signed an executive order in 2017
- https://content.govdelivery.com/attachments/WIGOV/2017/10/27/file_attachments/903537/Executive%2BOrder%2B%2523261.pdf
- AB 553, passed and signed into law in 2018 (codifies and narrows the governor's 2017 E0 261)
- https://docs.legis.wisconsin.gov/2017/proposals/reg/asm/bill/ab553

APPENDIX B:

Arizona

- A.R.S. § 35-393(2)(a)
- "'boycott' means engaging in a refusal to deal, terminating business activities **or performing other actions** that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel"

Arkansas

- Ark. Code Ann. § 25-1-502(1)(A)(i)
- "'boycott of Israel' means engaging in refusals to deal, terminating business activities, **or other actions** that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner"

Colorado

- Colo. Rev. Stat. § 24-54.8-201(3)
- "'economic prohibitions against Israel' means engaging in actions that are politically motivated and are intended to penalize, inflict economic harm on, **or otherwise limit commercial relations** with the state of Israel including, but not limited to, the boycott of, divestment from, or imposition of sanctions on the state of Israel."

Florida

- § 215.4725, Fla. Stat. (2020).
- "'boycott of Israel' means refusing to deal, terminating business activities, **or taking other actions** to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner."

Georgia

- O.C.G.A. § 50-5-85(a)(1)
- "'Boycott of Israel' means engaging in refusals to deal with, terminating business activities with, **or other actions that are intended to limit commercial relations** with Israel or individuals or companies doing business in Israel or in Israeli-controlled territories"

Idaho

- SB 1086
- "'Boycott of Israel' means engaging in refusals to deal with, terminating business activities with, **or other actions that are intended to limit commercial relations** with Israel or individuals or companies doing business in Israel or in Israeli-controlled territories"

Illinois

- 40 ILCS 5/1-110.16(a).
- "'Boycott Israel' means engaging in actions that are politically motivated and are intended to penalize, inflict economic harm on, **or otherwise limit commercial relations** with the State of Israel or companies based in the State of Israel or in territories controlled by the State of Israel."

Indiana

- IC 5-10.5-3-1
- "'boycott, divest from, or sanction Israel activity' means action or inaction that: (1) furthers; (2) coordinates with; or (3) acquiesces in; an effort by another person to penalize, inflict economic harm on, **or otherwise limit commercial relations** with the Jewish state of Israel or businesses that are based in the Jewish state of Israel or territories controlled by the Jewish state of Israel."

Kansas

- K.S.A. 2017 Supp. 75-3740e (2017)
- "'Boycott' means engaging in a refusal to deal, terminating business activities or performing **other actions that are intended to limit commercial relations** with persons or entities doing business in Israel or in territories controlled by Israel"

Kentucky

- Executive Order 2018-905
- "'Boycott' means refusing to deal with, terminating business activities with, **or otherwise taking any action** that is intended to penalize, inflict economic harm on, or limit commercial relations with, a jurisdiction with which Kentucky can enjoy open trade, or with a person or entity doing business with a jurisdiction with which Kentucky can enjoy open trade"
- SB 143
- "Boycott" means refusing to deal with, terminating business activities with, or **otherwise taking any action** that is intended to penalize, inflict economic harm on, **or limit commercial relations with**…."

Louisiana

- Executive Order JBE 2018-15
- All state vendors each must certify it "has not…refused to transact or terminated business activities, **or taken other actions intended to limit commercial relations**, with a person or entity that is engaging in commercial transactions in Israel or Israeli-controlled territories, with the specific intent to accomplish a boycott or divestment of Israel."
- HB 425
- By submitting a response to this solicitation, the bidder or proposer certifies and agrees that the following information is correct: In preparing its response, the bidder or proposer has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor or supplier, refused to transact or terminated business activities, **or taken other actions intended to limit commercial relations,** with a person or entity that is engaging in commercial transactions in Israel or Israeli-controlled territories, with the specific intent to accomplish a boycott or divestment of Israel.

Maryland

- Executive Order 01.01.2017.25
- "'Boycott of Israel' means the termination of or refusal to transact business activities, **or other actions intended to limit commercial relations,** with a person or entity because of its Israeli national origin, or residence or incorporation in Israel and its territories"

Minnesota

- Minn. Stat. § 16C.053
- "includes but is not limited to engaging in refusals to deal, terminating business activities, **or other actions that are intended to limit commercial relations** with Israel, or persons or entities doing business in Israel"

Mississippi

- MS Code § 27-117-3(a) (2019)
- "'boycott of Israel' means refusing to deal, terminating business activities, **or taking other actions to limit commercial relations** with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner"

Missouri

- RSMo § 34.600(A)(3)(1)
- "engaging in refusals to deal, terminating business activities, or other actions to discriminate against, inflict economic harm, **or otherwise limit commercial relations** specifically with the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, that are all intended to support a boycott of the State of Israel"

Nevada

- NV Rev. Stat. § 286.737 (2019)
- "refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with **or performing any other action that is intended to limit commercial relations**"

New Jersey

- NJ Rev. Stat. § 52:18A-89.14(2)(e)
- "engaging in actions that are politically motivated and are intended to penalize, inflict economic harm on, **or otherwise limit commercial relations with another state or nation**"

New York

- Executive Order 157 (2016)
- "to engage in any activity, or promote others to engage in any activity, that is intended to penalize, inflict economic harm on, **or otherwise limit commercial relations** with Israel or persons doing business in Israel for purposes of coercing political action by, or imposing policy positions on, the government of Israel"

North Carolina

- NC ST § 147-86.80
- "Engaging in refusals to deal, terminating business activities, or taking actions that are intended to penalize, inflict economic harm, **or otherwise limit commercial relations** specifically with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories."

Ohio

- ORC 9.76(A)(1)
- "engaging in refusals to deal, terminating business activities, **or other actions that are intended to limit commercial relations** with persons or entities in a discriminatory manner"

Oklahoma

- 74 O.S. § 582(E)(1)
- "engaging in a refusal to deal, terminating business activities **or performing other actions that are intended to limit commercial relations** with persons or entities doing business in Israel or in territories controlled by Israel"

South Dakota

- Executive Order 2020-01
- "engaging in conduct of refusing to deal, terminating business activities**, or other similar actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations** specifically with the State of Israel, companies doing business in or with Israel"

Texas

- Tex. Gov't Code § 8-808.001(1)
- "refusing to deal with, terminating business activities with, **or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations** specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory"

Tennessee

- Tennesse SB 1993
- "refusals to deal, terminating business activities, **or other commercial actions that are intended to limit commercial relations with Israel,** or companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in Israel, when such actions are taken:"

Utah

- Utah Code Ann. § 63G-27-101
- "refusing to deal, terminating business activities, **or taking another action that is intended to limit commercial trade** relations with a person in a discriminatory manner"