

LEGAL UPDATES

PUBLISHED: MAY 24, 2019

Texas Amends Israeli Anti-Boycott Law

Services

Government
Contracts
Public Law

Professionals

KATHARINE D. DAVID
HOUSTON:
713.525.6258
KATE.DAVID@
HUSCHBLACKWELL.COM

BEN STEPHENS
HOUSTON:
713.525.6263
BEN.STEPHENS@
HUSCHBLACKWELL.COM

MIKE STAFFORD
HOUSTON:
713.525.6259
MIKE.STAFFORD@
HUSCHBLACKWELL.COM

SANDY HELLUMS-GOMEZ
HOUSTON:
713.525.6222
SANDY.GOMEZ@
HUSCHBLACKWELL.COM

On May 7, 2019, Governor Greg Abbott signed into law House Bill 793 (H.B. 793), narrowing a previous version of the anti-boycott Israel law. The 2017 bill, codified at Tex. Gov. Code § 2270.001 *et seq*, mandated that government entities could not contract with a company unless the company signed a statement saying it does not boycott Israel and will not in the future. The new law excludes sole proprietors and small contracts from this requirement.

The amendment attempts to clarify and narrow the current statute, which a federal district court recently decided was likely unconstitutional. *Bahia Amawi v. Pflugerville Indep. Sch. Dist., et al.*, No. 1:18-cv-01091-RP (W.D. Tex. April 25, Doc. 109). The district court case involves Bahia Amawi, a speech pathologist who was told she could only continue her contract work with the school district if she promised not to boycott Israel. Amawi, who conducted bilingual and early childhood evaluations for the district, refused to sign the addendum to her contract. As a result, she was told that she couldn't be paid, and the district terminated her contract on September 17, 2018. She sued in December.

The district court held that boycotts are protected free speech and that the anti-boycott law forces "public debate through coercion rather than persuasion" in violation of the First Amendment. *Id.* at *56 (quoting *Turner Broad. Sys. v. FCC*, 512 U.S. 641 (1994)). In granting the preliminary injunction the Court found that Amawi would likely succeed on the claims that H.B. 89 is unconstitutional under the First Amendment because it (1) is an impermissible content- and viewpoint-based restriction on protected expression; (2) imposes unconstitutional conditions on public employment; (3) compels speech for an impermissible purpose; and (4) is void for vagueness.

In response to this ruling, the new act, H.B. 793, amends H.B. 89 in two ways. First, the act clarifies the definition of “company” by explicitly excluding sole proprietorships from this definition. Second, the amended act applies only to a contract that: (1) is with a company that has 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds.

What This Means to You

Under the new law, agreements between government entities and contractors must consider both the size of the contractor and the size of the contract to determine whether the contract must include an anti-boycott provision. Any contract made with a company with 10 or more full time employees that has a value of \$100,000 or more that will be paid wholly or partly from public funds must contain a written verification from the company that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Contracts with smaller companies or for smaller amounts need not include this provision.

H.B. 793’s language may fail to address the district court’s constitutional concerns with the earlier version of the law. The district court’s opinion stated “because H.B. 89 is not supported by a permissible aim of government, no amount of narrowing its application will cure its constitutional infirmity.” Therefore, it is likely the new law could face the same constitutional challenges as the previous version.

Contact Us

If you have questions about this update or how it might affect your business, contact Kate David, Robert Eckels, Sandy Hellums-Gomez, Arturo Michel, Heidi Rasmussen, Ben Stephens or Mike Stafford.