

PRESS RELEASE:
LDB Files Amicus Brief in Support of
Arizona Anti-BDS Law

Washington, D.C., February 12, 2018: On Friday, [the Louis D. Brandeis Center for Human Rights Under Law](#) (LDB) filed an amicus brief in support of [HB 2617](#), an Arizona state law that requires state contractors to certify that they are not "engaging in a boycott of Israel." The Brandeis Center filed its [brief](#) in response to a lawsuit filed by the American Civil Liberties Union (ACLU) challenging the First Amendment implications of the law. Late last year, the ACLU filed a [similar lawsuit](#) challenging a Kansas anti-BDS statute.

The law, HB 2617, requires Arizona companies that seek government contracts to confirm in writing that the company does not engage in discriminatory boycotts of Israel and will not engage in such boycotts for the duration of the government contract. The amicus brief filed by LDB notes that federal, state, and local governments across the United States regularly follow similar procedures to prevent discrimination, promote equality under the law, and ensure that public funds are not used for illegal or invidious purposes. Federal, state, and local laws have long required government contractors to refrain from discrimination on the basis of national origin, race, religion, and other classifications as a condition to receiving government contracts. The LDB brief contends that upholding the ACLU's challenge to HB 2617 would chip away at the government's ability to promote equality under the law through regulation of discriminatory conduct.

The Brandeis Center brief argues that "[i]t is commonplace and appropriate for federal, state, and local governments to condition the receipt of a government subsidy or contract on a commitment not to discriminate." The LDB brief also notes that the federal government places similar restrictions on its funding for public and private universities. Courts have consistently affirmed the constitutionality of such conditions, and recognize that anti-discrimination conditions on government subsidies and contracting do not prohibit any constitutionally protected speech or conduct.

The Brandeis Center also contends that the Arizona law challenged by the ACLU regulates discriminatory conduct, not speech. It is addressed to the discriminatory conduct of companies that contract with the State. HB 2617 deters boycotts against Israel and ensures that public funds will not subsidize such discriminatory conduct. The law does not regulate in any way any individual citizen, any company that does not voluntarily enter into a commercial contract with the state, or any speech of any kind.

The Brandeis Center argues in its brief that States may regulate conduct even if the regulation "entails an incidental limitation on speech," provided that the regulation is narrowly tailored and aimed at conduct (such as discrimination) and not at speech. The Arizona law furthers an important state interest by discouraging discriminatory conduct. The boycott of Israel or of persons who do business in Israel is discriminatory conduct, and is, therefore, not speech protected by the First Amendment.

The Brandeis Center brief was drafted by Akiva Shapiro, Matthew Greenfield, Vince Eisinger, and Lawrence Zweifach at Gibson, Dunn & Crutcher LLP.

The Arizona law at issue is one of 24 anti-BDS laws passed by legislatures across the United States.

Alyza D. Lewin, Chief Operating Officer and Director of Policy for the Brandeis Center, noted, “Laws discouraging the discriminatory conduct espoused by the Boycott, Divestment and Sanctions campaign combat anti-Semitism in the United States and protect free commerce with America’s ally. They do not suppress or interfere with constitutionally protected speech. Supporters of BDS may profess not to be hostile toward Jews, but the movement has become a conduit for the communication of anti-Jewish tropes and memes. As Ken Marcus has observed in his book on the definition of anti-Semitism, the BDS movement ‘attacks the commitment to Israel that is central to the identity of the Jewish people as a whole.’ Anti-BDS laws are, therefore, essential components of efforts to combat the disturbing rise of anti-Semitism in this country.”

The Amicus Brief may be found [here](#).

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ABOUT THE LOUIS D. BRANDEIS CENTER: The Louis D. Brandeis Center, Inc., or LDB, is an independent, nonprofit organization established to advance the civil and human rights of the Jewish people and promote justice for all. The Brandeis Center conducts research, education and advocacy to combat the resurgence of anti-Semitism on college and university campuses. It is not affiliated with the Massachusetts university, the Kentucky law school, nor any of the other institutions that share the name and honor the memory of the late U.S. Supreme Court justice.