

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BAHIA AMAWI,

Plaintiff,

v.

PFLUGERVILLE INDEPENDENT  
SCHOOL DISTRICT, et al.,

Defendants.

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1:18-CV-1091-RP

*Consolidated with:*  
1:18-CV-1100-RP

**ORDER**

Before the Court in this consolidated action are two motions for a preliminary injunction filed by Plaintiff Bahia Amawi (“Amawi”) and Plaintiffs John Pluecker, Zachary Abdelhadi, Obinna Dennar, and George Hale (the “Pluecker Plaintiffs”) (together, “Plaintiffs”), (Amawi Mot. Prelim. Inj., Dkt. 8; Pluecker Mot. Prelim. Inj., 1:18-CV-1100, Dkt. 14),<sup>1</sup> and responsive briefing, (Dkts. 24, 25, 39, 40, 42, 45). Also before the Court are motions to dismiss filed by Defendant Ken Paxton, in his official capacity as Attorney General of the State of Texas (“Texas” or the “State”), (Dkt. 55), Defendants the Board of Regents of the University of Houston System and the Board of Regents of the Texas A&M University System (the “Boards” or the “Universities”), (Dkt. 24), Defendants the Trustees of the Klein Independent School District and the Trustees of the Lewisville Independent School District (the “Trustees” or the “School Districts”), (Dkts. 43, 44), and responsive briefing, (Dkts. 38, 45, 49, 51, 60, 61, 63). Having considered the parties’ arguments, the evidence, and relevant law, the Court will grant Plaintiffs’ motions for a preliminary injunction and deny Defendants’ motions to dismiss.

<sup>1</sup> The Pluecker Plaintiffs’ motion for a preliminary injunction is hereafter cited as: (Pluecker Mot. Prelim. Inj.).

## I. INTRODUCTION

This case is about whether Texas may prohibit boycotting the State of Israel as a condition of public employment. Plaintiffs in this case are all participants or supporters of the “BDS” movement. The BDS movement—referring to boycotts, divestment, and sanctions—arose in response to Israel’s occupation of Palestinian territory and its treatment of Palestinian citizens and refugees. (Abbas Decl., Dkt. 14-2, at 16–18; Clay Decl., Dkt. 14-2, at 6). Modeled after the South African anti-apartheid movement, the BDS movement seeks to pressure the Israeli government to end its occupation of the West Bank, Gaza, and Golan Heights, end discrimination against Arab-Palestinian citizens of Israel, permit Palestinian refugees to return to their homes, and otherwise comply with international law. (Pluecker Mot. Prelim. Inj., Dkt. 14-1, at 10; Clay Decl., Dkt. 14-2, at 6). The BDS movement claims to be nonviolent and opposed to all forms of discrimination, including anti-Semitism and Islamophobia. (Clay Decl., Dkt. 14-2, at 7, 11).

Congress, however, has declared that it “opposes politically motivated actions that penalize or otherwise limit commercial relations specifically with Israel, such as boycotts of, divestment from or sanctions against Israel.” 19 U.S.C. § 4452. Twenty-five states have enacted legislation or issued executive orders restricting boycotts of Israel, (Texas Resp. Mots. Prelim. Inj., Dkt. 25, at 3), and several more have introduced legislation to that effect, (Abbas Decl., Dkt. 8-4, at 12–14). In every state to consider such legislation, the proposed measures have passed by considerable margins. (Texas Resp. Mots. Prelim. Inj., Dkt. 25, at 4).

In 2017, Texas joined those states opposing the BDS movement when it enacted House Bill 89, codified at Tex. Gov. Code § 2270.001 *et seq.* (“H.B. 89”). Texas emphasizes that H.B. 89 was “widely supported” and “passed unanimously in the House, and 26-5 in the Senate.” (Texas Resp. Mots. Prelim. Inj., Dkt. 25, at 1; Texas Mot. Dismiss, Dkt. 55, at 1). As a result of the State’s disapproval of the BDS movement, Plaintiffs allege that they have lost the benefit of public

employment with the State of Texas, or fear losing such employment, and that H.B. 89 prohibits them from exercising their First Amendment right to boycott the State of Israel.

#### **A. House Bill 89**

H.B. 89 prohibits state entities from contracting with companies that “boycott Israel.” It provides:

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains 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.

Tex. Gov. Code § 2270.002.

The term “boycott Israel” is defined to mean “refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict 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.” Tex. Gov. Code § 808.001.

The term “company” includes “a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.” Tex. Gov. Code § 808.001.

It is indisputable that H.B. 89 targets participation in BDS campaigns. Both Representative Phil King, the bill’s sponsor, and Governor Gregg Abbott have referred to H.B. 89 as the “anti-BDS bill.” (*See* Clay Decl., Dkt. 14-2, at 16–19). Representative King has described the BDS movement as “economic warfare” and stated that H.B. 89 reflects Texas’s disapproval of the movement because “[t]he BDS movement is directed at harming and destroying Israel, pure and simple.” (Abbas Decl.,

Dkt. 8-4, at 56). Upon signing the bill, Governor Abbott proclaimed that “[a]nti-Israel policies are anti-Texas policies, and we will not tolerate [boycott] actions against an important ally.” (Clay Decl., Dkt. 14-2, at 20). Similarly, King stated that “[t]he bill sends a strong message that Texas stands with its friends,” and Abbott responded to a news report about this litigation by tweeting “Texas stands with Israel. Period.” (*Id.* at 23, 26). When asked by a media outlet what motivated him to introduce H.B. 89, King provided four reasons:

First, as a Christian, my religious heritage is intrinsically linked to Israel and to the Jewish people. Second, as an American, our national security is dependent in great part on a strong Israel, often our only friend in the Middle East. Third, as a Texas legislator, our state has a substantial Jewish population and this issue is important to them. Texans have historical ties and do a lot of business with Israel. Fourth, it’s just the right thing to do.

(Abbas Decl., Dkt. 8-4, at 56).

## **B. Plaintiffs’ Boycotts**

Plaintiffs in this consolidated action are five sole proprietors who allege that H.B. 89 violates their First and Fourteenth Amendment rights. Because the nature of Plaintiffs’ boycotts is relevant to this dispute, they are described in detail below.

### 1. Bahia Amawi

Plaintiff Amawi is a speech pathologist. (Amawi Decl., Dkt. 8-3, ¶ 1). She is a United States citizen and Muslim of Palestinian origin, has family members living in Palestine, and claims that she has “seen and experienced the brutality of the Israeli government against Palestinians.” (*Id.* ¶ 8). She testifies that the Israeli government cuts off main roads for Palestinians but not Israelis in the West Bank, imposes “curfews that last for weeks” despite the need to obtain groceries or health treatments, closes schools, subjects Palestinians to constant searches, and takes Palestinian children into custody during the night. (Hr’g Tr., Dkt. 81, at 15:3–19). Amawi claims to participate in the BDS movement because she “advocate[s] for Palestinian human rights and justice,” and to that end,

“support[s] peaceful efforts to impose economic pressure on Israel, with the goal of making Israel recognize Palestinians’ dignity and human rights.” (Amawi Decl., Dkt. 8-3, ¶¶ 8–9). Amawi asserts that she “frequently make[s] economic decisions on the basis of [her] support for Palestine and [her] ethical objections to Israel’s mistreatment of Palestinians,” including buying Palestinian olive oil and refusing to buy the Sabra brand of hummus because of the company’s connections to Israel. (*Id.* ¶ 9).

For nine years, Amawi has contracted with the Pflugerville Independent School District (“PISD”) to provide speech therapy and early childhood evaluations for three- to five-year-old children in the school district. (*Id.* ¶ 2). She refused to sign an addendum in her renewal contract with PISD for the 2018–19 school year, however, because the addendum required her to certify that she does not boycott Israel and will not boycott Israel during the term of her employment. (*Id.* ¶ 4, 5, 7). Amawi contacted PISD regarding the addendum before refusing to sign it. (*Id.* ¶ 5). Initially, PISD informed Amawi that it thought she could strike out the “No Boycott of Israel” paragraph and initial it, but later confirmed that “agreeing to [the] Paragraph . . . was mandatory to receive payment for [her] services.” (*Id.* ¶ 6). Amawi refused to sign the contract because she believed that the “No Boycott of Israel” paragraph “violate[d] [her] First Amendment right to advocate for human rights in Palestine.” (*Id.* ¶ 10). She was therefore forced to terminate her contractual relationship with the school district. (Amawi Compl., Dkt. 1, ¶ 4). PISD has stipulated that it will offer Amawi another contract to provide speech pathology service, one not containing the no-boycott certification paragraph, if this Court invalidates or enjoins H.B. 89. (Not. Cond. Stip., Dkt. 18, at 2).

## 2. John Pluecker

Plaintiff Pluecker is a freelance writer, artist, interpreter, and translator. (Pluecker Decl., Dkt. 14-6, ¶ 1). As an interpreter and writer, Pluecker volunteers his time and talent to civil rights

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