Adalah's petition is not mentioned in the response. The State Attorney's Office requested that their response to the earlier petitions be relevant to ours as well. All petitions will be heard together. The upcoming hearing is scheduled for December.

Excerpts of the State's Response to Petitions submitted to the Supreme Court against the Law for Prevention of Damage to the State of Israel through Boycott

The Supreme Court
Sitting as the High Court of Justice

HCJ 5239/11
HCJ 5392/11
HCJ 5549/11

1. Uri Avneri
2. Gush Shalom

Petitioners HCJ 5239/11

Adi Barkai et al.

Petitioners HCJ 5392/11

1. The Arab Movement for Renewal – Ta'al
2. MK Ahmad Tibi

Petitioners HCJ 5549/11

-V.-

1. The Knesset

Respondent in all the petitions

2. The Knesset Spokesperson

Respondent HCJ 5392/11

3. The Minister of Finance
4. The Attorney General

Respondents HCJ 5392/11

1. These petitions concern the contention of the petitioners that the Law for the Prevention of Damage to the State of Israel through Boycott 5771 – 2011 must be struck down. Two of the petitions request the annulment of the law in its entirety and the other (HCJ 5392/11) requests the annulment of Articles 2 and 3 of the law.
   […]

2. The petitions will inevitably be rejected, as they demand the examination of the constitutionality of primary legislation that formulates guidelines for a framework whose implementation will be determined through civil or administrative procedures. At this time, the procedures for implementing the law and the interpretation of its various components have not been tested and, therefore, the harm necessary for the justification of the annulment of the law has not yet been established. In light of this, at this juncture, the time for testing the constitutionality of the law has not ripened as the present challenge to the law lacks substantial tangibility and is, therefore, general and broad. Under these circumstances, and in accordance with the criteria that were outlined in the rulings of the court, it is inevitable that the petition will be rejected out of hand.

4. To the crux of the matter, and in brief, the position of the state is that the law, notwithstanding the difficulties it raises, does not establish a justification for constitutional annulment.

A. A Survey of the Law

[…]

6. Firstly, the law defines a boycott against the State of Israel as follows:

> "1. In this law "boycott against the State of Israel" – deliberately avoiding economic, cultural or academic ties with another person or another factor only because of his ties with the State of Israel, one of its institutions or an area under its control, in such a way that may cause economic, cultural or academic damage."

7. From this point, the law establishes two separate tracks which we will designate as the "civil track" and the "administrative track".

A(1) The Civil Track

8. The civil track is set in Article 2 of the law.

9. Article 2(a) of the law defines the civil wrong of knowingly publishing a public call for a boycott against the State of Israel (Hereinafter: **"the boycott wrong"**).
[…]

10. Article 2 (b) of the law established a provision regarding the relationship between the boycott wrong and the specifications of clause 62 (a) of the civil tort law.
[…]

11. Section 2 (c) of the law determines the authority of the courts to award damages, for example, for a wrong committed according to the law if the wrong was committed with malice.
[…]

A(2) the Administrative Track

12. The administrative track is set in articles 3-4 of the law.

13. Article 3 of the law empowers the Minister of Finance, subject to the agreement of the Minister of Justice and the approval of the Constitution, Law and Justice Committee, to determine regulations restricting the participation in a tender of a party that knowingly published a public call for a boycott or who committed to participate in the aforementioned boycott.
[…]

14. Article 4 (a) of the law empowers the Minister of Finance, in consultation with the Minister of Justice, to deny benefits to anyone who knowingly published a public call for a boycott or anyone who committed to participating in the boycott.
[…]

15. Article 4 (b) of the law determines that the Minister of Finance will employ the powers granted him under Article 4(a) of the law according to regulations that will be set in the future, but that these are not a prerequisite for the execution of the powers.
[…]

B. Survey of the Legislation Processes

[...]

24. On 2.3.11, the law proposal was published in Reshumot [the official law registry] (Knesset Law Proposal 373, page 112). The published proposal included various amendments to the original bill. Thus, among other

matters, the definition of a "boycott against the State of Israel" was altered, the provision regarding civil wrong was attenuated expanding the scope of the discretionary powers granted to the court, and the punitive provision was **deleted** (although in the law's explanation it was determined that during the preparation of the bill for a second and third reading, the possibility of establishing a criminal offense will be examined), as was the regulation concerning the legal standing of a person who is not a citizen or resident of Israel and the regulation concerning a boycott imposed by a foreign political entity. A provision was included permitting the restriction of participation in a tender in wake of a commitment to participate in a tender.
[…]

27. On 11.7.11, the law was passed by the Knesset plenum. The law was published in Reshumot on 13.7.11.

C. The Position of the State on the Petitions

28. The following will present the position of the state relating to the petitions. Our position is, first and foremost, that the petitions will inevitably be rejected out of hand. Concerning the core of the issues at hand, as will be explained, the position of the state is that the law, notwithstanding the significant constitutional difficulties it contains, is constitutional.

D. The petition will Inevitably be Rejected Out of Hand

29. Before we refer to the issues at hand, we will note that, in our view, the petitions will inevitably be rejected out of hand at the present stage as the two tracks the law delineates are "open" tracks awaiting interpretation and implementation by the courts in relation to the civil track, and implementation by the Minister of Finance (whose decision is unequivocally subject to judicial review) in relation to the administrative track. Therefore, there is no immediate need for a decision regarding the question of constitutionality, and for the annulment of the law, at a stage when it has not yet been implemented.

30. Case law has long ago established that the honorable court does not deliberate petitions of a constitutional nature unless an absolute necessity to examine the issue arises.
[…]

32. In the framework of HCJ 7190/05 ***Lobel v. the Government of Israel*** (on 18.1.06), the Honorable Justice Naor related to the "Doctrine of the Unripe Time" in constitutional law, according to which a judicial ruling

on a constitutional issue will be formulated when a "concrete, clear and full" factual foundation was laid. […]

33. We will add to the above, that a few days ago the honorable court reached a decision in HCJ 3429/11, ***the Alumni of the Arab Orthodox High School in Haifa et. al v. the Minister of Finance et. al*** (published on 5.1.12), [the petition against the "Nakba Law"]…. While noting the complexity of the subject and the issue raised by it, the petition was rejected because the time for a decision on the question of constitutionality was unripe.
[…]

34. Furthermore, after ascertaining that the petition is not ripe for a judicial ruling due to the absence of a concrete factual foundation, the ruling surveys the justifications for this noting that the aforementioned articles of the law have not yet been implemented and that the test of constitutionality must take place, should the need arise, after their implementation…
[…]

35. We emphasize that the aforementioned also applies, to a large extent, to the law that is the subject of this petition, and therefore, as will now be explained, on the backdrop of these criteria, the petitions will inevitably be rejected out of hand - in reference to both the civil track and the administrative track.

D(1) Rejection Out of Hand – the Civil Track

36. The civil track of the law determines a tort wrong, and the realization of the rights resultant from it mandates holding a process of judicial review by means of a civil lawsuit. The law leaves wide discretionary powers in the hands of the courts – both regarding the interpretation of the grounds of the wrong and of the conditions under which liability was created based on it, and in the interpretation of various conditions for granting, for example, compensation or damages. Therefore, adding tangible content to this wrong requires diverse interpretive judgments. Among other matters, the courts will be required to decide under which circumstances a public call for a boycott constitutes a wrong, what constitutes the core of the demand for cognizance in Article 2(a) of the law and so forth. The courts will also be required to decide, for example in all that relates to the provision on damages, under which circumstances the wrong was committed "with malice". At the present time, it is impossible to know how the courts will choose to mold the interpretational framework, and what content they will want to add to the various provisions of the law. All these may affect the questions of constitutionality raised by the petitions. In view of all this, we believe

that, at the present time, the petitions are not ripe for deliberation or decision and that they will be rejected out of hand.

37. It must be noted: these assertions do not signify that our position is that the law does not raise constitutional questions. Our claim is that, at the present time, there is no need – in accordance with the criteria that was set in the aforementioned case law – for clarifying these discrepancies, and that this can be accomplished, when the time comes and a concrete legal procedure takes place.
[…]

D(2) Rejection Out of Hand - the Administrative Track

40. The administrative track, as explained above, grants the authority to limit participation in tenders and to prevent or deny various administrative benefits. The implementation of this power is subject to the **discretion** of the Minister of Finance, under various conditions (including, as regards some powers, consultation with additional parties or the reception of their confirmation). This situation leaves a wide scope for the employment of discretionary powers. Similarly to the aforesaid regarding the civil track, it also appears that **the matter at hand concerns a legal scheme for which an operational framework has not been set, whose boundaries are not clear, and is not yet known if, and in which cases, the minister will decide to employ the powers granted to him by law.**

41. As to our matter. Given that not even one individual case has been brought before the Minister of Finance requiring him to assess the implementation of his powers under the law, and when consequently, the administrative authority has not yet injected concrete interpretational content into the law provisions under discussion, the petition is one that is **sweeping, abstract and unripe for decision.** In other words – the state believes that the appropriate way to deliberate the constitutionality of this track of the law is through a concrete case and not during a preliminary phase before any decision has been made that injects practical, concrete content into the provisions of the law.

42. Moreover, in all that concerns the exercise of the powers granted him under Article 4 of the law regarding a tangible party, the Minister of Finance will not exercise his powers **before a hearing** is held for this party (obviously, along with the consultation with the Minister of Justice as required under Article 4 of the law, or the reception of the approval of various ministers). In all that regards the exercise of authorities under Article 3 of the law, the determination of provisions under the article requires the confirmation of the Knesset Constitution, Law and Justice Committee which, it may be presumed, will hold a deliberation and hear various parties before reaching a decision.

43. Therefore, it appears that the issue at hand is the challenge to an "unripe problem" which ought to wait for the formulation of the general and specific guidelines and context that the minister will refer to when exercising his powers. Certainly, the doors of the (authorized) courts will always be open to petitioners in all that regards a future, concrete case. The position of the state is that this is the appropriate manner for examining constitutionality in the framework of this law. Hence, the petitions are destined to be rejected out of hand also from this aspect.
[…]

E. The Core of the Matter

48. Concerning the crux of the matter, as we will explain, we believe that, in spite of the constitutional problems it generates, the law does not raise grounds for its constitutional annulment.

49. At the beginning of the constitutional analysis, it must be indicated that the law, like all other primary legislation, is protected by the presumption of constitutionality. Chief Justice D. Beinisch referred to this matter in her decision in HCJ 2605/05, ***the Academic Center for Law and Business (A"R), the Human Rights Division v. the Minister of Justice*** TA 2009(4), 2405, 2416 (2009)…:

> "[…]Moreover, it must be remembered that a law legislated by the Knesset enjoys the presumption of constitutionality which imposes on the claimant of unconstitutionality the burden of demonstrating, at the very least ostensibly, that the law is not constitutional, before the burden passes on to the state and the Knesset for the justification of its constitutionality. The presumption of constitutionality requires the court to presume that the law does not aim to harm constitutional principles…"

[…]

50. At the basis of this practice stands the principle of mutual respect between authorities, and the self-restraint that the court employs regarding the annulment of Knesset legislation.
[…]

G. The Boundaries of the Dispute Raised in the Petitions

52. As explained above, two of the petitions request

the annulment of the law, and one of the petitions requests the annulment of Articles 2 – 3 of the law. This is **ostensibly** the framework of the discussion of the petitions.

53. However, the examination of the contentions of the petitions reveals that they focus **only on the arguments that the law restricts the freedom of political expression in all that regards the policy of the Israeli government relating to the areas of Judea and Samaria,** and that hence the law prevents the possibility of calling for a boycott based on the ties of a person or a party to the region. In other words, the petitions in practice attack only one element of the law – the phrase "area under its control" within the definition of a "boycott on the State of Israel".

54. Accordingly, in our view, an examination of the petitions reveals that the remedy being sought is not, in fact, the annulment of the law or the annulment of whole articles, as in any case **no foundation was laid for awarding remedies of this kind**. All that the petitions contain, at most, are contentions that the phrase "area under its control" within the definition of a "boycott against the State of Israel" must be annulled.

55. Thus, with regard to the core of the **real** contention presented in the petitions, and should the court indeed decide to fully accept it, the correct remedy that must be awarded is not the annulment of the law or of Articles 2-3 of the law, but the deletion of the words "area under its control" from the definition of "boycott against the State of Israel".
[…]

H. The Model of the Test of Constitutionality

57. The court examines the constitutionality of a law within the boundaries of constitutional review. This is a matter of fundamental conceptions, and does not require addressing the question of the prudence of the law.
[…]

58. As well-known, a test of constitutionality is carried out in three stages. The first stage of the constitutional review examines whether the law harms human rights that are anchored in a basic law and protected by it. If the answer is negative, the constitutional review ends. If the answer is positive, the review must move forward to the second stage. The second stage examines whether the harm to a constitutional right is legal. At this stage it must be examined whether the law upholds the demands of the limitations clause. If the answer is positive the constitutional review ends. If, on the other hand, the answer is negative, the review must move forward to the third stage which examines the outcome of the illegality of the law. […]

59. As stated, during the second stage of review, the examination is conducted in accordance with the balancing equation set by the limitation clauses of the basic laws. Article 8 of the Basic Law: Human Dignity and Liberty determines that "There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required or according to the law by virtue of the authority set in it".

60. Within the boundaries of this test, it is required that the harm be "no greater than required". This stipulation is composed of three sub-tests: the test of a rational connection, the test of the least harmful means, and the test of proportionality in the "narrow sense".

61. The first subtest – the test of the rational connection: At this stage we will examine whether the "means chosen would rationally lead to the realization of the purpose" […]

62. The second subset – the test of the least harmful means: As ruled, "the second subtest of proportionality is the test of the means that least harms human rights. **It is not required that the means chosen will absolutely be the least harmful, only that it will fall within the boundaries of the test of proportionality.** […]

63. The third subtest – the test of proportionality in the narrow sense of the term: Here it must be examined whether the realization of proper purpose is proportionate to the harm to human rights. This is an ethical test which balances between conflicting values and interests according to their weight and broaches the question of reasonableness. […]
[…]

66. Taking into account legal infrastructure, we will examine the constitutionality of the law.

I. The Harm to Constitutional Rights

67. As explained above, during the first stage - as a primary condition of the test of constitutionality - the question of whether the law harms protected constitutional rights is examined. There are two auxiliary questions concerning this matter. Firstly – does the administrative track set in the law harm a right? Secondly – does the harm to the right constitute a constitutional violation? […]

68. We will examine the question of the alleged harm to constitutional rights in relation to each of the tracks separately, the administrative track and the civil track, owing to the differences in analysis of these tracks. […]

69. Concurrently, and before we discuss the model of the constitutional review, we will present the principal primary aspects of diminution that appear in the law, as these can affect the scope of the harm alleged to be caused in the law. These are important as it appears that the petitioners **did not consider** these aspects.

70. **Firstly,** the law does not prevent direct political expression concerning issues in conflict […]

71. **Secondly**, when considering the matter under discussion, the call for a boycott to which the law relates is one that wholly relates to ties to the State of Israel and the area under its control. The law does not relate to a call for a boycott on other grounds, even if they are related to this.

72. **Thirdly**, the call for a boycott must be **public and conscious**, and not an incidental call.

73. **Fourthly**, the general principles of the tort laws apply to the civil sphere, including *de minimis* restrictions, the demand for proof of damage and a causal connection between the wrong and the damage.

74. **Fifthly**, within the civil sphere, the imposition of damages for example is stipulated by **malice** and will be implemented, in our view, only in rare cases.
[…]

J. Violation By Law

75. The first condition set in the limitations clause is that a violation must be by law or according to the law. The matter that concerns us is one of primary legislation by the legislator. Hence, the first condition is undoubtedly met.

K. A law that is in Keeping with the Values of the State and is for a Proper Purpose

[…]

77. In essence, the purpose of the Law for the Prevention of Damage to the State of Israel through Boycott is to protect **all** of the citizens of Israel (or Israeli institutions) from the imposition of a boycott that may harm them only because of **their tie with the state, one of its institutions or the area under its control.**
[…]

79. It is apparent that there can be no dispute that this purpose is an appropriate purpose that is in keeping with the values of the state. This purpose articulates the duty of the state to protect individuals and institutions tied to it so that they will not be harmed only because of this tie.

80. An additional example in legislation that includes a similar rationale is the provision of Article 13 of the Penal Law 5737-1977. This provision determines the cases in which Israeli penal law applies to external offences.
[…]

85. To support this conclusion, we will present an arrangement that is similar to the arrangement in this law, which appears in Article 161 of the Penal Law. This article establishes a criminal offence founded on, among other things, the imposition of a boycott or the threat of a boycott as follows:

> "161. One who commits one of the following deeds whilst harming the body or the property of a person either by threatening or intimidation or through a boycott or the threat of a boycott against him or his property and without any reasonable cause or justification for the boycott shall be sentenced to three years imprisonment; […]

86. Seemingly, the purpose of this article is similar to the purpose of the law under discussion. […]
[…]

88. The question of the control of the State of Israel over the areas of Judea and Samaria is a matter that is disputed by the public. This debate is welcomed and stands at the core of the democratic and political discourse. However, it is not a ground for harming the proper purpose of the law. […]

89. Our position is, therefore, that the law was intended for a proper purpose and is in keeping with the values of the state. We will continue to discuss how the law meets the tests of proportionality. We will do this while distinguishing between the administrative track and the civil track.

L. The Examination of the Civil Track

[…]

91. Article 2(a) of the law determines that whoever knowingly publishes a public call for a boycott against the State of Israel commits a civil wrong.

This provision sets a number of **substantial** restrictions which must be noted.

Firstly, Article 2(a) determines that a public call for a boycott must be carried out "knowingly".

Secondly, Article 2(a) of the law determines that the boycott wrong will only be raised when there is reasonable probability that the call will bring about a boycott, and that the party who published the call was aware of this possibility. It follows that not all calls for a boycott qualify as a wrong. […]

Thirdly, Article 2(a) of the law determines that the provisions of the civil tort law will apply to the boycott wrong. As follows, all of the general provisions of the civil tort law also apply here including the regulations for determining the extent of the payment for damages. […]

92. Article 2(a) of the law determines that in regards to clause 62(a) of the civil tort law [new version], he who causes a binding legal agreement to be breached by calling for a boycott against the State of Israel will not be viewed as someone who operated with sufficient justification. […]

93. Article 2(c) of the law determines the authority of the courts to award compensation that is not dependent on damage. The authority to award damages for example is stipulated on the wrong having been committed "with malice".

The demand for malice is, in our view, a fundamental and necessary condition for awarding penal damages. […]

In view of the above, we believe that the awarding of damages for example will only be possible in highly exceptional cases, such as in cases where the aim of the call for a boycott is declared to be harm to the petitioner as an Israeli or personally, and when the call is aimed at a specific victim. This is in contrast with a case where the dominant aspect of the action is general - political or when the call for a boycott is broad by nature. […]

L(2). Does the Civil Track Violate Constitutional Rights?

[…]

95. The core of the petitioners' contention is that the civil track in the law violates the freedom of expression…including the freedom of political, artistic, and academic expression.

96. The position of the state is that the violation of the freedom of expression is indeed embodied within the law. However, in our view, as

will be explained below, this violation is a legal violation due, among other reasons, to the scope of the violation […]

97. The scope of the freedom of expression ranges to all forms of expression, and all the topics of expression. […]

98. The law's civil track creates a certain restriction on the freedom of expression as it establishes a wrong and makes it possible to impose sanctions against the form of expression defined as "a public call for a boycott". However, we believe that the extent of the violation of the freedom of expression is relatively minimal.

99. The petitioners claim that the law harms the political discourse, and particularly in their view, the discourse that relates to the policy of the government of Israel in Judea and Samaria. There is no doubt that this is a "political" issue that is disputed by the public at large. However, the law relates to this political discourse in a highly limited manner in that it only forbids **calling for a boycott.** The law does not protrude in any way whatsoever on the freedom of expression concerning other aspects of this issue, and those who wish to express their position have many additional, diverse methods of expression available to them. […]

100. Moreover, it is possible that the argument that will be voiced is that the employment of the means of a boycott, or a call for a boycott, is in fact an impediment to an open discourse.

101. Thus, the harm to the freedom of expression is quite limited, and without discounting this, it in fact applies to a very narrow segment of the political discourse. Our opinion, as will be explained below, is that this constitutes a significant factor in the examination of the constitutionality of the law's civil track.

102. The petitioners also claim that the law's civil track harms the right to property. This claim is made in a general manner in some of the petitions and we believe that it must not be accepted. If there is a harm to property in the law, it comes in the wake of the violation of the freedom of expression. In other words – in as much as it will be found that violation of the freedom of expression by the civil track of the law is constitutional, then the harm to property (as a result of the existence of a wrong that makes it possible to award compensation) will rationally also be found to be legal. […]

[…]

L(3) The upholding of the Tests of Proportionality by the Civil Track

104. In our opinion, the law meets the first test of proportionality as there is a rational connection between the means and the purpose….The existence of a tort wrong under which it is possible to be compensated for damage caused by a public call for a boycott, subject to the stipulations and limitations set in the law, serves this purpose and meets the criteria of the first test of proportionality.

In our view, this aspect of the law also meets the second test of proportionality. The rationale for this is that the boycott law – in referring to the provisions of the tort law – does not make it possible for a person to be compensated for more than the damage caused to him…and therefore, the harm of the law is minimal as it restores the situation to what it was – and not beyond it.

In our view, the civil track also meets the third test of proportionality. The law does create a certain limitation on forms of expression. However, this limitation relates to a certain kind of expression – the call for a boycott. Moreover, the law does not prevent a call for a boycott, only expects that whoever calls for the said boycott will bear the consequences of his actions. […]

105. Our aforesaid statements have so far overlooked the possibility that Article 2(c) of the law sets for awarding damages for example. It appears that this means, in this context, raises significantly greater constitutional problems…

In our view, the means of damages for example meets the first test of proportionality for the reasons expounded above. In all that regards the second and third tests of proportionality, we believe that, in view of the described restrictions imposed on the awarding of damages including the demand that the call be carried out with malice, and the assumption that this track will only be implemented in rare and exceptional cases and when the call was directed against a specific individual, it is possible to view the awarding of damages for example as meeting the second and third tests of proportionality. Regretfully, our position is that the question of whether the damages track meets the second and third tests of proportionality must be clarified through concrete cases that will be brought before the courts.

M. Examination of the Administrative Track

[…]

M(2) Does the Administrative Track Harm Constitutional Rights

109. The petitioners claim that the law's administrative track gives rise to a violation of the freedom of expression, the freedom of occupation, the right to property and the freedom of association.

110. In our view, as we will now explain, it is highly doubtful whether the provisions of the administrative track violate a constitutional right.

111. As is well-known, no citizen or any party whatsoever has a vested right to enjoy various benefits granted by the state. Therefore, we believe that the powers set in Article 4 of the law regarding the denial of various benefits do not violate the core of the constitutional rights in question.

112. This is also, in our opinion, the situation regarding the authority to limit participation in tenders. This is an authority that can harm the principle of equal participation in a tender, which is a fundamental right in the tender laws… However, the right to participate in a tender held by the state (or by another public authority subject to the provision of the Mandatory Tenders Law) is founded on the obligation to ensure equality in the distribution of various state budgets intended for the acquisition of services and products. Therefore, this restriction must be viewed in the same manner as the restrictions set in Article 4 of the law relating to the denial of various benefits.
[…]

114. In addition, it is doubtful whether this track of the law raises a violation of anyone's right to freedom of expression. The law does not forbid an entire public to express itself, as the petitioners are attempting to claim. […]

115. In other words: the administrative track set in the law **does not deny the freedom** of a supported or financed body to express itself in a certain way in the framework of its actions or to take any form of action whatsoever. **The choice of the state not to allocate resources to a certain party does not necessarily lead to a violation of the freedom of expression or the freedom of occupation, as the party retains the freedom to take action in the way it chooses although without the financial support of the state.** […]

116. The fundamental principle at the basis of the administrative track is the prerogative given to the State of Israel to decide how its resources will be allocated and how its benefits will be distributed. This honorable court determined, in other contexts, that one of the basic and fundamental powers of the government and the Knesset is the determination of its fiscal policy. Therefore, it is clear that the state is permitted to decide that it not finance bodies found to have taken actions that are, in essence, opposed to its policies and interests and to the interests of its citizens.
[…]

119. Moreover, this honorable court has related in detail to situations in which state funds were exploited by a state-supported body in order to take action against the policy of the government. In the framework of HCJ 10104/04 Peace Now – ***Shaal Educational Projects v. Ruth Yosef*** , a local authority used funds granted to it by the state for actions against government policy. In the ruling it was determined that it is not appropriate that funds granted by the state will be used to finance the struggle of a local authority against state decisions. The court also determined that this deed is not in keeping with the principle of decency and the rules of good governance. […]

120. In our opinion, the above is also relevant to this case, where the state seeks to prevent a situation in which state budgetary funds may be exploited for an activity that challenges the government's policy whilst harming (or potentially harming) individuals and parties **only because of their ties to the state, one of its institutions or the area under its control**.

121. Therefore, in view of the above, we believe that it is highly doubtful that the administrative track harms constitutional rights. Along with this, we believe that even if it will be found that the said violation has transpired, the law's administrative track meets the tests of proportionality that were determined in case law to which we will now refer.
[…]

M(3) The Law's Administrative Track Meets the Tests of Proportionality

123. In all that regards the first test of proportionality, there is a rational connection between the means chosen which we had related to and the purpose – the prevention of a call for a boycott or participation in a boycott […]

124. In all that regards the second test of proportionality, the harm is the least harmful means necessary for the achievement of the purpose […]

125. We believe that under the overall circumstances, this aspect of the law also meets the third test of proportionality […]

126. We have already related to the interests which the legislation wishes to protect and to the prerogative of the state regarding the distribution of its resources. **The Respondent will contend that even should the honorable court determine that there is a constitutional violation within this matter, the force of the violation is not grave**. As aforementioned, the freedom to carry out the action is not denied to the body that wishes to carry it out, but the state is not prepared to take part in funding it or to enter into a financial relationship with it. In

addition, the individuals that are part of this body have a large number of **alternatives** for expressing their positions and points of view...**Moreover, it is assumed that the responsible authorities will implement this article in a balanced, equal and appropriate manner.** […]

127. The conclusion of all of this is that the administrative track also meets the third test of proportionality as it embodies an appropriate and reasonable balance between the prerogative of the state in the allocation of its resources, bearing in mind the absence of a vested right of anyone to enter into a relationship with it, and the freedom of political expression of bodies supported and financed by it.

128. We will add that the law established a kind of **balancing and oversight mechanism under the Knesset and the government** concerning the decision of the Minister of Finance to implement the powers accorded to him under the law.
In order to implement the powers set in Article 3, the Minister of Finance must receive the agreement of the Minister of Justice and the approval of the Constitution, Law and Justice Committee.
In order to implement the powers set in Article 4 of the law, the Minister of Finance is required to consult with the Minister of Justice and, in some cases, he is obligated to receive the agreement of another (relevant) minister. […]

129. In conclusion of the matter, we wish to add that it appears that this regulatory means is necessary as it is odd that a person who calls for a boycott against the State of Israel or bodies identified with the principal interests of its policy, and who explicitly acts against these, will seek to enjoy benefits or various services granted by the boycotted body whose policy he wishes to alter.

130. The respondent, therefore, believes that the third test of proportionality has also been met in this matter as there is a reasonable balance between the harm to the "party" and the interest for which a violation of the right has allegedly been committed.

N. The Claim of the Violation of Equality

131. We will also refer, marginally, to the petitioners' claim that the law violates equality because it prohibits the use of a boycott in regard to a specific type of boycott.
[…]

133. The petitioners claim that the law relates to a specific type of boycott does not constitute a constitutional violation of equality…The fact that the legislator chose to regulate a certain issue in legislation due to his

belief that the matter requires a legislated response but did not, at this time, choose to regulate other matters (such as determining regulations preventing the call for a boycott in other contexts) does not constitute grounds for the claim of a violation of constitutional equality. […]
[…]

O(2) The Prospects of the Petition and the Balance of Convenience

141. In all that regards the prospects of the petition, we believe that these are low, and that, on its face, the petition does not constitute grounds for the constitutional annulment of the law.
[…]

P. Summary

146. The position of the state is that, despite the significant constitutional issues that the law raises, there is no cause for constitutionally annulling it. Under these circumstances, the petitions will inevitably be rejected.

147. In view of the aforementioned, it is requested that the petitions and the request for an interim injunction be denied, and that the petitioners be ordered to pay legal fees and expenses as set in the law.

Today, 17 January 2012

_____	_____
Yochi Genessin	Uri Keidar
Director of Administrative Affairs	Senior Deputy to
The State Attorney's Office	the State Attorney